Supreme Court, U.S.
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No. 02-9410

IN THE SUPREME COURT OF
THE UNITED STATES OF AMERICA

MICHAEL D. CRAWFORD,
Petitioner

vs.

STATE OF WASHINGTON,
Respondent

On Petition for a Writ of Certiorari to
The Supreme Court of Washington

RESPONSE TO PETITION FOR WRIT OF CERTIORARI

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STATEMENT OF THE CASE

Respondent State of Washington, accepts the Statement of the Case set forth in Crawford's Petition as supplemented with the following additional facts and/or corrections of misstatements (numbered in concert with Crawford's Petition):

1. The first statements made by Sylvia and Michael Crawford were similar, but not identical, because they had contrived their statements together before the police caught them. *See*, Appendix A (first statements of Sylvia and Michael Crawford); Appendix B(second statements of Sylvia and Michael Crawford). The discrepancies were significant enough to cause the police to question Sylvia and Michael again, resulting in the second statements of Sylvia and Michael Crawford which were virtually identical in all material respects but one, that being on the question of whether the victim was armed at the time of the assault. On that point, both Sylvia and Michael were equally ambiguous.

Sylvia Crawford was charged by Information on November 24, 1999, with Rendering Criminal Assistance in the First Degree for her part in the assault upon the victim, Mr. Lee. *See*, Appendix C. On December 8, 1999, the Information was amended to include a charge of Assault in the Second Degree, also related to Sylvia's participation in the assault on Mr. Lee. *See*, Appendix D. On January 18, 2000, Sylvia Crawford pleaded guilty to a Second Amended Information charging Assault in the Third Degree and Rendering Criminal Assistance in the First Degree, both related to her role in the August 5, 1999, assault on Mr. Lee. *See*, Appendix E; Appendix F.

3. The Washington Supreme Court did not hold "that Sylvia's second statement was admissible *solely* because it 'appear[ed] to overlap,' or 'interlocked,' with Petitioner's

custodial statement." *See*, Petition at 4 (citing Crawford's Appendix 8A)(emphasis added). The quoted section of the Washington Supreme Court's decision follows that Court's discussion of only those portions of Sylvia and Michael's second statements that concerned the question of whether the victim was armed when Michael stabbed him. *See*, Appendix G at 8. It was *only* those portions of the second statements of Sylvia and Michael Crawford that the Washington Supreme Court said "overlap." *Id.* The actual holding of the Washington Supreme Court was consistent with its own prior case law, including, *State v. Rice*, 120 Wn.2d 549, 844 P.2d 416 (1993), which had adopted this Court's decision in *Lee v. Illinois*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed. 514 (1986), *i.e.*, that the second statement of Sylvia Crawford was reliable because it was "virtually identical" to the second statement of Michael Crawford. *See*, Appendix G at 8, 9.

REASONS NOT TO GRANT THE WRIT

1. The issue concerning whether the Confrontation Clause permits admission into evidence of a non-testifying accomplice's custodial statement, on the basis that it is virtually identical to the defendant's confession, is not a critical issue across the Nation and does not require review or re-examination of the Confrontation Clause.

2. The decision of the Washington Supreme Court is not contrary to this Court's precedent.

3. Even if *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638 (1990), did overrule that portion of *Lee v. Illinois*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed. 514 (1986), permitting trial courts to consider the interlocking nature of a co-defendant's statement with a defendant's statement to determine reliability under the Confrontation Clause, any error by the Washington Supreme Court in applying that test for reliability was harmless because the surrounding circumstances of Sylvia Crawford's second statement in this case rendered Sylvia particularly worthy of belief and rendered her second statement reliable for Confrontation Clause purposes.

ARGUMENT

1. The issue concerning whether the Confrontation Clause permits admission into evidence of a non-testifying accomplice's custodial statement on the basis that it is virtually identical[1] to the defendant's confession is not a critical issue across the Nation. By Petitioner's count, over the past 17 years only eight of the fifty State high courts appear to have addressed the issue of whether the Confrontation Clause permits the admission against a criminal defendant of a custodial statement by an accomplice / co-conspirator on the grounds that the accomplice's statement is "virtually identical" and therefore "interlocks" with the defendant's custodial statement. Those eight appear to be evenly split on the issue. Also by Petitioner's count, only two federal circuits have addressed the issue. This minor split of authority is not the "critical issue in criminal trials across the Nation" that Petitioner proclaims it to be and certainly does not warrant a complete reevaluation of the application of the Confrontation Clause.

2. The decision of the Washington Supreme Court is not contrary to this Court's precedent. The current decision is based upon the Washington Supreme Court' s adoption in *State v. Rice*, 120 Wn.2d 549, 570, 844 P.2d 416, 427 (1993), of this Court's decision in *Lee v. Illinois*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed. 514 (1986), in which this Court reasoned: "Obviously, when codefendants' confessions are identical in all material respects, the likelihood that they are accurate is significantly increased." *Lee*, 476 U.S. at 545. This Court further explained:

> As we have consistently recognized, a codefendant's confession is presumptively unreliable as to the passages detailing the defendant's conduct or culpability because those passages may well be the product

> of the codefendant's desire to shift or spread blame, curry favor, avenge himself, or divert attention to another. If those portions of the codefendant's purportedly "interlocking" statement which bear to any significant degree on the defendant's participation in the crime are not thoroughly substantiated by the defendant's own confession, the admission of the statement poses too serious a threat to the accuracy of the verdict to be countenanced by the Sixth Amendment. In other words, when the discrepancies between the statements are not insignificant, the codefendant's confession may not be admitted.

Lee, 476 U.S. at 545. The logical inference of this proposition is that when the discrepancies between the statements *are* insignificant, then the codefendant's statement *may* be admitted.

Petitioner (and those jurisdictions that have held *contra* to the Washington Supreme Court on this issue) has interpreted this Court' s decision in *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638 (1990), as overruling that portion of *Lee v. Illinois* suggesting that a codefendant's statement may be admitted when the discrepancies between the statements are insignificant. However, this Court, in *Wright*, merely commented that in *Lee*, it had considered and rejected the interlocking nature of a co-defendant' s and defendant's confessions "in that case." *Lee*, 497 U.S. at 824. *Wright* did not expressly overrule *Lee*.

In addition, in *Wright*, the State was advocating that a non-testifying victim's statement was reliable because it was corroborated by the *physical evidence* obtained during an examination by a physician. *Lee*, 497 U.S. at 809-811, 819. It was in that context that this Court held, as a general proposition: "hearsay evidence used to convict a defendant must possess indicia of reliability by virtue of its inherent trustworthiness, not by reference to other evidence at trial." *Lee*, 497 U.S. at 822. However, the "other evidence" in *Wright*, was not an interlocking confession, the specific evidence sought to be admitted in *Lee*. Therefore,

Wright cannot reasonably be interpreted as rejecting consideration of interlocking confessions to determine reliability.

Moreover, common sense demands recognition that a codefendant's statement that, is in all material respects virtually identical to the defendant's statement/confession, is reliable for purposes of satisfying the Confrontation Clause. "[T]he veracity of hearsay statements is sufficiently dependable to allow the untested admission of such statements against an accused when ... it contains 'particularized guarantees of trustworthiness' such that adversarial testing would be expected to add little, if anything, to the statements' reliability." *Lilly v. Virginia*, 527 U.S. 116, 124-125, 119 S.Ct. 1887, 1894, 144 L.Ed.2d 117 (1999)(quoting *Ohio v. Roberts*, 448 U.S. 56, 66, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980)). It is difficult to imagine a scenario where adversarial testing would add less to a statement's reliability than when it is virtually identical to the defendant's confession.

3. Even if *Idaho v. Wright*, 497 U.S. 805, 110 S.Ct. 3139, 111 L.Ed.2d 638 (1990), did overrule that portion of *Lee v. Illinois*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed. 514 (1986), permitting trial courts to consider the interlocking nature of a co-defendant's statement with a defendant's statement to determine reliability under the Confrontation Clause, any error by the Washington Supreme Court in applying this test for reliability was harmless because the surrounding circumstances of Sylvia Crawford's second statement in this case rendered Sylvia particularly worthy of belief and rendered her second statement reliable for Confrontation Clause purposes. These "surrounding circumstances" include the fact that Sylvia Crawford was Michael's wife, that Sylvia's second statement was made shortly after Michael's second statement, with no opportunity for the two to discuss the

content of their second statements prior to making them, and that Sylvia's second statement is virtually identical to Michael's.

CONCLUSION

For the foregoing reasons, the Writ should be denied.

Respectfully Submitted this 8th day of May, 2003.

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ENDNOTES

1. Petitioner's characterization of this criteria as "parts of it 'interlock'" is inconsistent with applicable case law. *See*, *Lee v. Illinois*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed. 514 (1986); *State v. Rice*, 120 Wn.2d 549, 844 P.2d 416 (1993).

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APPENDIX A

The case number is unknown at this point (99-6530). The time is approximately 7:03 p.m. The date is August 5, 1999. I'm Detective Gies of the Olympia Police Department. Also present is Sylvia

q and what's your last name
a Crawford
q Crawford. This statement's being recorded at the Olympia Police Department in a conference room. Sylvia, do you understand this statement is being recorded and is this with your consent
a yes
q ok, please speak up
a yes
q would you give me your full name and spell it please
a Sylvia Margarita Crawford S Y L V I A - M A R G A R I T A - C R A W F O R D
q would you give me your address please
a 8100 Dawn D A W N Hill Drive, Olympia, Washington 98513
q would you give me your home phone number
a 455-8738
q do you have a work phone number
a no
q would you give me your date of birth
a 3/10/78
q Sylvia, this'll be your warning and waiver of constitutional rights. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right at this time to an attorney of your own choosing and have him or her present before and during questioning and the making of any statements. If you can not afford an attorney, you are entitled to have one appointed for you by the court without cost to you and to have him or her present before and during questioning or the making of any statements. You have the right to exercise any of the above rights at any time before or during any questioning and the making of any statement.
a I have a question
q sure
a since I don't have a lawyer and can't afford one, would we be let go until there was lawyer present or what. How does that work
q well, if you don't, if you can not afford one, one would be appointed to represent you
a yeah but one's not here
q one's not here now. If you want a lawyer here before you say anything, you have the perfect
a will I be detained or will I be let go. (Inaudible) How does that work

q I don't know if you'll be let go or detained more at this point or not. It depends on how the investigation continues. Ok, so I, I can't answer if you'll be detained longer or not, I don't know. At this point this is under investigation and that's, that's where we're at, at this point. Do you understand that
a uh-huh (yes)
q is that yes
a yes
q ok, cause the tape can't see your head
a yeah
q do you want me to read it to you again or do you understand it
a I understand it
q ok, what I'd like you to do is I'd like you to sign here signifying you understand those rights. Ok, and don't hesitate, Sylvia, to ask any questions. (signing) This is the waiver to your rights
a I (inaudible)
q ok, listen carefully. I have read or have had read to me the above explanation of my constitutional rights and I understand them. I have decided not to exercise these rights at this time. Any attached signed statements are made by me freely, voluntarily, and without threats or promises of any kind. Do you understand that
a uh-huh (yes)
q is that yes
a yes
q ok, do you wish to waive your rights at this time. In other words, do you wish to talk to me now
a and get it over with or talk to you later and get it over with, with more advise on what's going on?
q it's your decision. It's totally your decision. You can stop talking at any time. Like if I ask you a question and you don't wish to answer that question, you don't have to
a ok
q do you understand that
a I don't have to answer any questions
q you don't have to at this point if you don't want to
a ok
q or you can just answer a few questions or you can answer them all, it's your decision
a I'll go for that
q ok, does that mean that you'll waive your rights at this time. Ok, that's a yes
a yes
q ok, don't hesitate to ask anything, ok
a ok and earlier while I sitting here, I heard officers talking outside and I heard one of them say they didn't believe me and that (inaudible) charges before here and

yada, yada, yada and whatnot
q ok, I don't know anything about that
a why would, why would they say that
q I don't know why
a (inaudible)
q I can't speak for them. All I can say is maybe they don't believe you. I don't know
a the officer when he came in and he said that it wasn't said but I know that I heard it. I'm know I'm not crazy
q well, I don't know why they said it. I just called in from home, ok, so I don't know why they said it. I'm here, as I've told you earlier, to get to the truth
a yeah
q that's why I'm here, ok. I can't say I don't believe you or believe you because I haven't had a chance
a (inaudible)
q I don't know what's going on, ok, do you understand. Ok, I'd like you to sign here signifying you understand the waiver and you wish to waive your rights, ok
a alright
q ok
a (signing) (speaking under breathe)
q ok, let's back up to this afternoon or maybe early this afternoon and who is Michael Crawford
a my husband
q ok, and you and Michael apparently were at somebody's residence today, is that correct
a yes
q ok, let's start at perhaps noon today. Were you with that individual from noon on today
a nope
q ok, were you with Michael
a yes
q ok, how did you, and the individual that the other individual apparently involved, apparently (inaudible) name, Kenny
a uh-huh (yes)
q (inaudible) say yes or no
a yes
q ok, do you know his last name
a unh-unh (no) I don't
q no, ok, when did you, how long have you known Kenny
a I think it's three or four years now
q has Michael, your husband, known him for three or four years
a he's known him longer
q longer, ok, and have you and Michael been to his residence before

a not together
q ok, be sure you speak up. So you've been there alone with Kenny
a no
q has Michael been there alone with Kenny
a not to my knowledge
q ok, would you say that maybe Michael and Kenny are good friends
a (inaudible) yeah, they respect each other
q ok, maybe drinking buddies, just friends
a (inaudible)I moved away and I just got back into town not too long ago so
q how long
a I've been back into town two months now ok
q why did you move away. Were you separated from Michael for awhile
a um, yeah
q ok, did you and Michael go over to Kenny's residence today
a yep (yes)
q do you know where Kenny lives
a yes
q do you know his address
a no
q do you know the street
a no
q ok, is it an apartment or a regular house
a apartment
q ok, and what time did you and Michael go to Kenny's residence
a I don't know the time. It, it was, af..., it was late afternoon, (inaudible) early evening
q ok, and why did you and Michael go to Kenny's residence
a to go drinking
q ok, with Kenny
a with Kenny
q had he invited you guys over
a yes
q ok, be sure you speak up
a yes
q ok, so you and Michael showed up
a yeah, we were all there
q ok, who else was there
a Kenny
q is that all
a yes
q did you take beer with you or was beer already there
a he had said beer was already there we didn't take any with us

q when did he invite you over
a like I said, early afternoon. We got downtown, walking around, doing our usual thing (inaudible)
q oh, and then he invited over to come on over and go drinking
a yeah, well, (inaudible)
q ok, be sure you speak up. So you guys arrived and started drinking
a no
q what happened
a we arrived, looked for alcohol and there wasn't any so he sent Michael to go get some. (Inaudible) immediately he pinned me down
q ok, we'll get to that, we'll get to that. So he sent Michael to go get beer
a uh-huh (yes)
q did, is that yes
a yes
q did he give Michael money to go get the beer or did Michael take his own money or what
a I don't (inaudible) as far as I knew, Kenny said it was his treat but I'm not positive
q you already drunk
a I (inaudible) been drinking
q during the day
a yes
q and you felt you were pretty intoxicated at the time
a yeah, we were all just having a good time. We were all smiling and laughing and joking around
q downtown
a um, yeah, (inaudible) met up with each other and we walked down to his place
q ok, how long were there before Michael went to go get beer
a (inaudible) minutes (inaudible)
q oh, not long at all
a no
q ok, Michael left
a Michael walked out the door
q and
a Kenny got up to lock it
q Kenny got up to lock the front door. Is that yes
a yes
q ok, did Kenny lock the front door
a I think so
q what happened then. Did you feel anything strange at that point, when he was locking the door
a yeah, I asked him why he did that
q and what did he say

a he said *oh, just because*
q ok, be sure you speak up Sylvia
a he said *Oh, just because*
q ok, what happened then
a what happened then he started asking me if I was drunk
q and what did you say
a I was like, yeah, I'm a wee bit tipsy, you know, and, and, and he took he kind of like touched my leg, a little bit
q your leg
a my leg
q were you standing up
a no, sitting down on the floor
q you were sitting on the floor
a yeah, (inaudible)
q (speaking over) with your knees together like an Indian would sit
a yeah, yes, you know like
q or kind of like a yoga would sit
a (inaudible) in kindergarten, you know, sittin' Indian style (inaudible)
q (inaudible) kind of like an Indian or yoga style
a yes
q so you're sitting like that, did he get down and he got down and touched your leg
a he's sitting down (inaudible) at an angle (inaudible)
q be sure to speak up and talk slowly, walk me through
a ok, and so then he touches my leg at first and I was like (inaudible)
q right below the knee, you show me
a ok, yeah
q ok
a below the knee and I asked him *what are you doing* and he was like *well, why did you come up here* and I was like *what'd you mean, to have a drink* and he was like *I know you came up here for one* and then the bed is right there, it's a studio apartment, and he pinned me on his bed
q how did he pin you on the bed, did he lift you up
a (inaudible) no, he got up and he went over me and pinned me on the bed and I told him, (inaudible) I said *Kenny get off, Kenny get off* and he wasn't listening and he didn't get off and I just started screaming louder and I don't think Michael headed to the store, I think he heard me screaming cause there was he didn't come back with beer and then Mike was pounding on the door and it was like *let me in* and I was like *Kenny get off* and Kenny got up. (Inaudible) and he started kicking the door, I think, it was loud, (inaudible) and I don't know what happened after that (inaudible) and then we ran
q well, let's walk. How did you end up on the bed, is the bed on the ground, is the mattress

a yes, it's on the ground, it's not up or anything
q it's a mattress basically
a yeah
q ok, did he attempt to take off any of your clothes
a he was going like this and pulling (inaudible)
q ok, so you got on grey
a sweat pants
q kind of warm up pants, basketball style warm up pants, is that correct
a I guess
q ok, and your waist is a stretch band around the waist
a (inaudible) stretch (inaudible)
q ok, and what did he try to do with your pants, did he try to pull them out and then downward, or pull them down or what
a no, he had me and he was, I don't know, (inaudible) he did it his hands (inaudible)
q waistband
a and he was pulling down, (inaudible) with my foot
q ok, so he tried to pull your pants down and you were able to fight him off
a ok, I'm getting uncomfortable
q is that correct
a yeah, it wasn't, yeah, I guess
q ok, but he was not successful because you were able to fight him off
a no he wasn't successful, it wasn't really a fight. It was like a push more, it was
q you were resisting
a yes
q ok, and then you started screaming and then you hear
a I started screaming once he pinned me down, I said *get the fuck off me*
q ok, and then a short time there after within maybe a few seconds, you heard Michael
a it was a couple minutes, he had to walk down the stairs and stuff. I don't know (inaudible) happened
q ok, but within a couple of minutes, Michael was back banging on the door
a yes
q ok, and Kenny got up and opened the door
a yeah
q did you see what happened when Kenny opened the door
a I didn't, (inaudible) there's a wall there, I got up but I didn't, there's a wall there and then when I came around the corner, I realized that Kenny was bleeding and got blood on my pants and we ran. I was like Mike, (inaudible) *let's get outta here* and he was *well*, like you know, we were discussing what we should do... I don't know
q was Kenny down on the ground at this point

a Kenny, (inaudible) when I came around the corner
q right
a no, he was still (inaudible) just falling
q just falling
a I think that's how some blood got on me
q did you see
a I don't know
q did you see if he had anything in his hand
a unh-unh (no)
q did you see if Michael had a knife
a unh-unh (no) I was flipped out man, I just wanted to leave
q ok, did Michael say anything about what had happened, think back
a he asked me if I was ok, he asked me if Kenny had hurt me, he asked me if, I was, yeah, he just asked me *are you okay, are you okay*, and I'm like, *yeah, are you okay*, you know, I said *what happened to your hand* he was like *I don't know* (inaudible)
q ok, so he didn't tell you if he'd stabbed or if he had to self-defense or anything like that with Kenny
a unh-unh (no)
q is that no
a no
q ok, did Kenny say anything that you know of, is that no, like a uaaaaa (pain sound)
a grunted
q that was it okay so you guys quickly left the scene
a yes, right away
q did you ever see Michael carrying a knife or anything
a no, I asked him for a cigarette and he gave me one so his hands were free
q did you see blood on his hands
a yeah, I asked him what happened to his hand
q and what did he say
a he said *I don't know* (inaudible)
q his hand was cut
a his hand was cut, pretty, he didn't let me see, it even (inaudible) cause I saw blood dripping from my sweater cause he had it covered up
q ok, do you remember anything else Sylvia
a yeah, Mike gave me the cigarettes
q ok, do you feel
a (inaudible) lighter
q do you feel that when Kenny pushed you down and attempted to take off your pants do you feel like he was trying to sexually assault you
a yes

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q ok, did you at all, do you feel you, at all, that you gave him any indication that you would like to have any sexual activity with him
a no
q ok, did he, while you had contact with him during the day from downtown to the apartment, did he at all advise you, before hand that he would like to have any sexual activity with you
a no, Mikey was right there, he would never say anything like that in from of Mikey
q ok
a he was looped
q he was looped
a (inaudible)
q do you feel he was highly intoxicated at the time
a that I couldn't tell I (inaudible) intoxicated I couldn't
q you weren't but you don't know if he was
a unh-unh (no) I was out having a good time, smiling, laughing and joking around, I and I wasn't, you know, (inaudible) you want anything, and (inaudible)
q ok
a it's none of my business
q ok, how come you didn't call police when you saw Kenny was hurt
a are you kiddin', to be honest I
q I want you to be honest
a I'm not really too upset about the fact that Kenny got hurt
q because of what he was doing to you
a yes, because of what he was doing to me
q ok
a the fact that he didn't respect me, the fact that he wouldn't get off, yeah
q ok
a what was I suppose to do, call the cops and say he was the one who tried to rape me
q do you have anything else you can remember Sylvia, anything else at this point, ok, be turning off the tape at this time.

Transcribed:
REG:tc

The case number is unknown at this point. The time is approximately 8:00 p.m. The date is August the 5th, 1999. I am Detective Gies of the Olympia Police Department. Also present is Detective Sergeant Jim Costa of the Olympia Police Department, and Mr. Michael Crawford. This statement is being recorded at the Olympia Police Department in a conference room.

q Michael do you understand this statement is being recorded and is this with your consent
a yes
q would you give me your full name and spell it please
a Michael Crawford or Michael David Crawford - M I C H A E L - D A V I D - C R A W F O R D
q would you give me your address please
a 1919 Evergreen Park Drive, Apartment 108 and that's in Olympia
q would you give me your home phone number
a 352-2476
q would you give me your work phone number
a I'm not currently working
q would you give me your date of birth
a 11/22/77
q this is the warning and waiver of constitutional rights. You have the right to remain silent. Anything you say can be used against you in a court of law. You have the right at this time to an attorney of your own choosing and to have him or her present before and during questioning and the making of any statements. If you cannot afford an attorney you are entitled to have one appointed for you by a court without cost to you and to have him or her present before and during questioning or the making of any statement. You have the right to exercise any of the above rights at anytime before or during questioning and the making of any statement. Michael, do you understand those rights
a yes
q speak up a little bit
a yes
q Michael, I'd like you to sign right there signifying that you understand your rights
a I admit I understand that I'm waivin' my rights (document being signed)
q you've just signed the signature for the understanding of the constitutional rights and you're also, went down a little bit and signed the signature for the waiver to your rights, is that right
a yes
q what I'm gonna do though Michael is, I'm gonna read them to you, okay? I know you, you want to waive them, at least that's the indication you're giving but I want to read them to you, okay? Do you understand that
a yes
q I have, this is the waiver: I have read or have had read to me the above explanation of my constitutional rights and I understand them. I have decided not to exercise these rights at

this time. Any attached signed statements are made by me freely, voluntarily and without threats or promises of any kind. Michael, do you understand the waiver

a yes
q do you wish to waive your rights at this time
a now, does that mean that...that if I choose to take that right again, I still can or
q what, if you waive your right, it means I'm going to ask you questions. You're giving me the okay to ask you questions and you can stop talking at anytime
a okay
q even if you give me the right to ask you questions and you don't wanna answer any of those questions you don't have to. If you just wanna answer one out of maybe 20 you can do that or you can answer all 20. It's your decision
a okay
q do you understand that
a yes
q okay, does that, now you've signed your name already. I'm asking you now, do you wish to waive your rights
a yes
q okay. For goodness sakes, you have any questions you ask Detective Sergeant Costa or I, do you understand that
a yes
q okay. Detective, I'd like you to sign there as a witness (document being signed). Michael, you're married to Sylvia
a yes
q and that's Sylvia Crawford
a yes
q okay, do you and Sylvia currently live together
a yes
q okay, the reason I ask is I believe she gave me another address
a she was living at um, this guy Paul Blum's house for awhile. She just, she very recently moved back in with me
q okay, but you are married
a yes
q okay, and do you know a Mr. Kenneth Lee, I guess he goes by Kenny
a yes
q how do you know Mr. Lee
a oh, we've known each other for years from downtown originally
q drinking buddies
a that and then other things
q give me an example of other things
a I don't wanna specify on that
q okay, and does your wife Sylvia know Kenny

a yes
q how long has Sylvia known Kenny
a um, about half as long as me, about 3 years
q okay, so you've known him maybe 6 years
a yeah
q give or take? Is that yes
a yes
q okay, be sure you speak up. Did you and Sylvia walk downtown today and perhaps run into Mr. Lee or how did you run into Mr. Lee today
a we ran into him downtown
q what time
a I don't, I don't even know what time it is now. I have no idea what time it is
q it's a little bit after 8:00 o'clock now, at night
a must a been a few hours ago
q would this of been the afternoon that you ran into Kenny
a yeah, it was afternoon
q was it pre-planned that you run into him or was it by chance
a it was by chance
q and so you guys ran into Kenny Lee downtown Olympia area
a yes
q and what happened when you ran into Kenny Lee
a um....well, I asked him about some money he owed us um, he told me to come by his place
q okay, and he apparently owed you some money for perhaps some marijuana or drugs
a I (won't?) (inaudible) specify
q okay, but he owed you money for something that you had given him in the past
a we had loaned him some money so that he could
q okay, but, and he owed you money
a yes
q and you asked him if he had the money, what was his answer
a he just said he'd probably have somethin' for me and told me to come by
q his residence
a yes
q had you ever been to his residence before
a I hadn't
q do you know if Sylvia had ever been there
a um, she had told me about something that happened at one point but I wasn't sure
q okay, can you be specific as to maybe something that happened
a she had told me that he had tried something with her before. Someone else had to help fight him off her and she got away and I wasn't sure if I believed it cuz, I don't know, she's bullshitted me a few times

q when you say something happened, does that mean perhaps he had attempted something of sexual activity on her
a yes, forcefully
q okay, if that's true, why...did you agree to go to his place then after he said he might have something for you
a yes
q was Sylvia with you at the time
a yes
q did Sylvia go along with you
a yes
q did you feel uncomfortable going there when Sylvia had said previously
a somewhat
q but you went anyhow
a yeah, I figured I could handle it
q were you under the expectation that he might pay you some money
a yes
q did the three of you then walk to his residence
a yes
q do you know where his residence is
a it's the brown apartments
q do you know the address
a no
q do you know the street they're on
a um, the one that goes up by Priest Point Park by AM/PM
q by AM/PM
a yeah
q off of that street that goes towards Priest Point Park
a yes
q okay, so the three of you went to his apartment
a yes
q speak up
a yes
q okay, and did the three of you then go in the apartment
a yes
q did you go for any other reason to the apartment then just to collect money from him? Was it possibly to visit, to...do drugs, to drink beer, any other reason but to collect money
a I wouldn't specify on that
q okay. So, three of you went in the apartment
a yes
q what happened then
a well, we agreed that I was gonna go to the store...and

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q why did you agree to go to the store
a (inaudible)
q was there something missing that you needed
a yes
q what was that
a I don't wanna specify
q okay. Could it have been beer
a it could of been
q okay. So you left the residence to go get something that could of been beer
a yes
q who, did you have the money or did he give you the money
a I had some money and he gave me five bucks
q okay, and how long were you in the apartment before you agreed to go get the item
a I'm not sure
q guestimate
a guestimate. I would say under an hour but close to an hour
q okay, and let, let's approximate then 45, 50 minutes. What happened that time that you were in the apartment during that period of time
a oh, we just bullshitted and stuff, and he told he'd get paid when he got his money or that he'd pay me some, somethin' and it was all cool, and he asked Sylvia if she was mad at him. So I knew something had to of happened
q okay, so he asked Sylvia if she was mad at him and what did Sylvia say
a she said it was okay, so ya know
q did that make you a little suspicious that maybe he had attempted something
a yes
q so what you're telling me is you sat there for 45 and 50 minutes and just visited
a yeah
q is that correct
a yes
q okay, and then you decided you needed something so you took some of his, he gave you some money, you had some money and you left to go to the store
a yeah, well, he, he, he bought it up sayin' that he wanted some more ya know, and so I was like, okay
q perhaps some more beer maybe
a perhaps
q okay, continue
a and, and he, I asked him ya know, if he wanted to go to the store with me and he said he didn't wanna go anywhere so
q speak up
a I started to go and then I felt comfortable leave, uncomfortable leaving Sylvia there and I went back to go get her and I heard (inaudible) and they were fighting by the door

q okay, so you left the residence and closed the door behind you
a yeah
q and would you describe where you went from there? Do you have to go down steps or up steps
a down steps
q how many steps
a I don't know
q a lot
a enough
q 20
a maybe
q okay, and where did you go when you decided you didn't feel comfortable and you turned around to go get her? Where were you at when you turned around
a um, I was close to AM/PM
q okay, and this residence is very close to AM/PM anyhow, isn't it? Would you say you were half way to the AM/PM, a third of the way, two-thirds of the way
a I'm not sure
q okay, but you never made it to the AM/PM
a no
q okay. You decided to turn around and go back
a yeah, I started walkin' there and then I started walkin' back from the AM/PM and I was thinkin' 'Well, well, I don't know'
q speak up
a and then I decided to go back and get her
q kay, so you turned around, walked back
a yes
q what happened then
a well, I went and, I heard something inside the door and I opened the door and they were fightin' on the floor
q kay, you're at the door and what did you hear
a I heard her screaming
q what was she screaming
a I don't remember
q was it a distressful scream
a yes
q and you opened the door or did he open the door? Or how did you, how did the door open
a I honestly couldn't, honestly answer that. I, I don't know if I opened it or if he opened it or if she opened it. I don't know
q did you make any effort to knock on the door or yell in the door prior to the door opening
a I believe I said something

q think back
a (pausing) I said something to Sylvia, I don't know, something like, 'What's going on? Or what's' something, I don't know
q this is while you were outside the door
a yeah
q kay, so some way or another the door opened but you don't recall how
a I'm not positive
q when the door opened what did you see
a Kenny tryin' to hold her down...she was on the ground and he was like, on his hands and knees or on his feet squatin' down or somethin', just down lower than me
q well, so, so I guess that would indicate if Kenny was down with her that would indicate apparently you're the one that opened the door
a possibly
q okay. Let's describe the position that they were in again. Is there a wall that separates a room from the front door or could there be a wall separating any, any (inaudible)
a (pausing) I don't understand the question
q walking through, the door's open and tell me what you saw again....walking through...I think what I'll do...how about drawing me a picture. As best you can put the front door and....and label everything because we'll need to know what everything is
a (pausing to draw picture) (inaudible) here's the door right here
q okay, if that's not anything just cross that out then
a it's like a, it's like a hallway that goes in here
q okay, and what's this
a I was thinkin' the couch, but I'm not sure if it goes that way
q okay, so this is a little wall here
a yeah, there's a wall that goes this way
q okay, what's to the left as you walk in? Nothing? Just a front room
a this is the front room but I don't remember exactly where the couch was....and they were like, right here
q so where you've got them is right inside the front door
a yeah, it ended up out here somehow
q outside the front door
a yes
q okay, but let's, let's walk through what you're drawing. You opened the door and the door comes outward
a I don't remember
q but there is nothing between you and them as they come in the door, is that correct
a (pausing) as they come in the door?
q right. As, as, as he, as you come in the door you saw them plainly right inside the front door
a I don't even think I made it in the door....I think that the fight came out the door

q okay, but you said you looked in, you, and what did see, him and her on the ground
a yeah, right in the door
q right in the door area
a like she was tryin' to get out the door or somethin'
q and what position was she in
a she was on the ground tryin' to get up
q was she on her knees or on, so she was, she looked like she was tryin' to get out the door
a yeah
q and was she on her knees
a I, I don't remember
q where was he
a he was like....she was like, kinda like, right here...and he was like right here or it could a been reverse. He could a been right here and she was right here
q okay, okay, but it was your thought she was attempting to get out the door
a that was my thought
q what was he attempting to do
a he was trying to restrain her. He was yelling something, I don't remember what...fuckin' tryin' to stop her from gettin' out the door
q okay, what happened then
a I don't know, I got aggressive at that point when I seen 'em and he got aggressive also
q let's walk through what happened. Tell me what aggressive means
a I don't know, just, (inaudible) got in a fight with somebody, you start first yellin' at each other and then blows and...(inaudible) weapons, weapons start (inaudible)
q well, did, when the door was there and you said they were right inside the door, you said it ended up a little bit outside. Did he get up and confront you? Did you confront him, what happened? Remember back, let's be specific
a (pausing) I kind of (inaudible) out when stuff like this happens, I mean...I could be tellin' you something, it might not be exactly how it happened
q do you remember pulling your knife out of where it was
a I don't even remember pulling it out
q do you carry a knife
a yes
q where do you carry your knife
a on my belt
q and is it on your right side of your belt or the left side of your belt
a usually the right side
q and is it in a sheath
a yes
q and is it, is the sheath something that you would maybe button over the top or is it the type of sheath that you can just reach and pull the knife right out
a you could, you could pull it out

q okay, what kind of knife is it
a it's um, a filet knife
q a filet knife. Give me approximate length
a mmm, 6, 7 inches
q okay, do you recall pulling that out
a I recall putting it back
q into the sheath
a yes
q do you recall holding it or anything prior to that
a yes
q what do you recall
a I recall getting my hand cut and I recall swinging the knife at him...and, and then Sylvia gettin' past. Once she was past me then we escaped down through the, the stairwell and just went from there and just were like, ya know (inaudible) 'What's goin' on?' (inaudible)
q (inaudible) you recall swinging your knife, is that what you said...or pushing it or lunging it or what, what do you recall doing with your knife
a lunging, swingin'. We were backin' out the door. I don't...
q was the knife in your right hand
a yes
q so that would indicate evidently you pulled it out with your right hand
a I believe so, I'm not positive
q okay, okay. Do you recall the knife striking him or any kind of a slash or a push into him or a swing at him that struck him
a yeah, I think I stabbed him
q okay, do you recall how you stabbed him or what the motion was
a I believe it was a forward jab
q okay, do you recall if it was one occasion, two or three
a I, I know I had to of got him once
q how do you know that
a I felt, I felt, I don't know, I just felt (inaudible) ya know
q you could feel the poke into him
a yeah
q is that a good description, I don't know
a I don't know either, I
q you know you got him once though
a I know (inaudible)
q by a straight in stab
a yeah
q okay, do you recall, think back, if you got him any other times
a I might of
q you might of. Would those of been straight in stabs too, do you believe

a um, I, I'm not sure
q kay, it's possible
a I was tryin' to but he was [redacted] and he had somethin'
q kay, why were you trying to? Were you mad
a I was mad
q kay, because you thought that he was doing something to your wife
a yes
q and do you feel like your madness took over for a few minutes
a yes
q do you know how your hand got injured
a I...I think he cut me with something. I may have tried to grab something in his hand(s). I'm not positive
q do you recall him having anything in his hands
a I believe that he had something that he pulled from somewhere, one of his pockets or his belt or somethin'
q you don't know what it was
a I recall him reaching for something. I remember my hand getting cut when I went to grab his arm
q and when did he reach for something
a when we were in that confrontation of...when Sylvia was trying to get out the door, the door came open somehow and that's when he was reaching for something and that must a been when I reached for somethin'. I remember my hand gettin' cut
q do you know, when you reached for your knife and you were swinging it and/or pushing it forward and striking him, do you know if he had tried to do anything to you yet or do you know if he attempted to perhaps come after you or was your hand cut after you had uh, swung your knife at him, do you recall
a I know, I know that it took impact outside of the apartment, which meant he was coming toward me. I remember him coming towards me and I know I didn't get him till he was outside of the apartment
q okay, do you recall when your hand was injured? Was it during the altercation of you swinging the knife, could it, before or afterwards or do you remember
a I really think it was before
q okay, you're not sure or you're sure
a at, at, at the beginning of the confrontation
q okay, do you know how your hand got injuried, with what instrument
a I don't know
q did you ever see him with a knife
a I seen him pull something out of his, out of his belt. I don't know what it was
q okay
a out of his pants or whatever
q did he say anything to you

a I wouldn't remember if he did. He said something, I don't know what. I wasn't listening
q what did you say to him
a I don't remember saying anything
q was this a very fast confrontation? The door opened, before you knew it he was outside and before you knew it you guys were walking away
a it was very fast
q okay, when did you realize your hand was cut
a well, I, I felt, I felt it ya know, at the beginning of the altercation but I didn't realize it was cut until I got down the road
q you might wanna lift that up because it's bleeding pretty good (inaudible). Do you...(background activity) When did you put away the knife
a um....outside....when I felt comfortable. I, at first I just was holdin' onto it really tight and then when I, I didn't see him comin' after us and that's when I put it away
q why didn't you call police
a (pausing) I thought about it. We just walked down the street. I thought about catchin' a bus. I, I don't know, I've been in a lot of trouble and I just, I didn't know what to do. I mean, I, I thought about catchin' a bus then we decided not to catch the bus. We were thinking about calling the cops then the cops came to us
q were you going to call the police or you don't know
a I may have
q kay. When you were swinging the knife at him and lunging it into him, did you mean to hurt him? You were mad I take it
a (no audible response)
q is that yes
a yes
q okay
a I was mad
q you were very mad
a yes. I realized that what she had told me earlier must of been true too
q apparently about him trying something sexually on her
a (inaudible)
q you meant to hurt him
a (pausing) I don't know if I meant to hurt him. I...
q you were just
a probably part of me did
q you were just in a, you might say a rage
a (pausing) you might say
q okay. Detective Sergeant Costa
Costa the injury that you have to your hand, did you do that to yourself
a I don't believe so
q okay

Gies could you of? Perhaps as you were swinging and/or lunging at him could you have maybe, I don't know, been holding onto it maybe and actually sliced your own hand by accident
a I don't, I don't think I could a done that or, I mean, this is bad news. (Inaudible) he had, he pulled something out
q okay. Why do you carry a knife
a protection
q okay. Did Sylvia tell you anything after you guys left the scene as to what happened
a she was trying to but I wasn't really listenin'. I was just kind of in a panic mode
q kay. When you left what position was he in? Where was he at
a he was at the like, on the stairway, at the top of the stairway
q standing? Down? On his knees
a he was standing
q he was. Was he crouched over
a he'd got into a defensive mode after I got him once
q okay, do you know how many times you stabbed him
a no
q do you have a guess
a once, maybe twice
q okay
a (pausing) I asked her (inaudible) she said I, she thinks I got him three times
q how did you try to stop your bleeding on your hand
a I was just holdin' it with my shirt
q okay. Do you have anything you'd like to add
a no
q have we coerced you into saying any of this or threatened you or anything
a no
q kay...kay, Detective, what time is it now
Costa 8:28
Gies time is now approximately 8:28 p.m. It's still August 5th, 1999, and we'll be turning off the tape at this time.

Transcribed:
REG/JDC:jp

APPENDIX B

This will be the statement of Sylvia Crawford. Today's date is the 5th of August, 1999. The time is 2243 hours. This statement is being recorded at the Olympia Police Department. Also present is Detective Holmes of the Olympia Police Department.

q Sylvia, do you understand this statement is being recorded, and is this with your consent
a yes
q would you give me your full name and spell your full name please
a Sylvia Margarita Crawford - S Y L V I A - M A R G A R I T A - C R A W F O R D
q and your address
a 8100 Dawn Hill Drive, Olympia, Washington 98513
q okay, you're gonna have to speak up just a little bit. Your date of birth
a 3/10/78
q do you have a home telephone number there
a 455-8738
q okay Sylvia, you've already talked to the police tonight, is that correct
a yes
q okay, and uh, you understand at this point this statement is being recorded, correct
a yes
q okay, before I ask you any questions and I explained this to you uh, earlier, but I'll go ahead and do it again. I'm gonna go through and read you your constitutional rights. You have the right to remain silent. Anything you say can be used against you in a court of law. Are you under the age of 18? No. Okay. You have the right to an attorney of your own choosing and to have him or her present before and during questioning or the making of any statements. If you cannot afford an attorney you are entitled to have one appointed for you by a court without cost to you and have him or her present before and during questioning or the making of any statements. Five: You have the right to exercise any of the above rights at anytime before or during questioning or making any statements. Now, do you understand each of those as I explained them to you
a yes
q okay. The, and I told you earlier that uh, initially when the first Detective talked to you he didn't advise you of your rights, correct
a he advised me of my rights
q did he
a he did
q okay, so you understood them then too
a yes
q okay
a and I, and I asked all the questions then
q okay, you're gonna have to sit closer to this or we're not gonna hear you...Pardon
a just wrapping up my feet
q okay um, on the bottom of this it says; I have read or have had read to me the above explanation of my constitutional rights and I understand them. I have decided not to

exercise these rights at this time and it says, any statements, it says attached statements, but we're doing a, a taped statement, are made freely, voluntarily and without threats or promises of any kind. Is that true
a yes
q okay, and I told you that you are not under arrest
a yes
q and you understand that
a yes
q and my reason for advising you of your constitutional rights was that uh, if you and I informed you that if you made a statement to me, an incriminating statement, that that statement could be used against you in a court, is that correct
a yes
q okay. I was not present the first time you were interviewed by Detective Gies
a that's right
q okay. I did sit in on an interview with your husband who is down here in our facility and I told you that, correct
a yes
q and I came back in here what, about a half hour ago and I told you that there were some inconsistencies with the story that your husband had told us and with the first story that you told the Detective. Is that true
a yes
q okay, and after we sat here for some time uh, you, I pointed out to you that I wanted the truth, is that correct
a yes
q and you asked me to tell you completely what your husband had told us and then if I did that you would uh, let me know whether that was the truth or not, is that correct
a yes
q okay, and I also told you that I wasn't gonna do that, correct
a correct
q but I did tell you some of the things that your husband told us
a yeah
q and after I told you that, you told me that you would tell me what really happened the night that you guys or what really happened tonight before you went over to this guy's house, correct
a yeah
q okay. So I'm gonna start over again and go through that. This, what was the name of this person's house that you went over again
a Kenny
q Kenny? Okay. You met Kenny in the past, correct
a yes
q okay, tell me about happened, I told you that uh, your husband had told us that you had mentioned to him that something took place between you and Kenny in the past where he

had done something sexual to you, correct

a yeah

q and you didn't tell us that the first time, right

a nope

q okay, if you can lean forward close to this or I'm not gonna be able to hear you and tell me what happened or tell me what it was and what happened between you and Kenny the first time

a the first time.....is that I came back into town and I ran into Kenny and...um...we had agreed to meet at The Reef, tavern or bar or whatever it is. Uh...and go drinking, thinking he was an old friend of ours...ya know, why not...go have a few drinks. I...was going to a job interview that day and I was gonna go have some drinks afterwards with him. In the process we, he introduced me to like three other people...and this other guy went with us. After a few drinks were bought Kenny decided it was getting a little expensive and that we should just go get a bottle and go to his place and drink. Me, I'm seeing no reason not to trust Kenny, okay ya know, why not...so we went to his apartment in Steve's truck and...we went to a liquor store first, got a bottle of vodka, went up to his apartment...Kenny sent Steve to the AM/PM on the corner right by his house to go get some orange juice to mix with the vodka...and in the process Kenny had pinned me down and...was...tearing at my clothes and I was fighting back...there were scratches on his neck. And his, his skin under my nail for a few days...that was gross, and then, anyway um...we were fighting, we didn't get along. At that point I was screaming for him to get the fuck off me. He wouldn't get off me...Steve heard me screaming through the window, ran upstairs, yelled at Kenny to let him in. Kenny didn't respond. Dude said, "I'm gonna kick your door in! I'm gonna kick your door in!" and Kenny did not still respond. Dude did kick the door in and pulled Kenny off me and I fled with the dude to his car...and went to go get some cigarettes and...for one reason or another I'm not quite sure of, we were supposed to meet up with Kenny again at the park later on that night. We were screaming, I was screaming cuz he had stolen my wallet. I think that's the only reason why we did go meet back up with him. I realized my wallet was gone when I went to go buy him a pack of cigarettes I didn't have my ID...and um...there was an officer there that made him give me my wallet back...at that point...took off again with Steve. We go to a parking lot and Steve was like, did, just, did what happen just really happen? Did it really happen? Is this really happening? And I'm like, 'Yeah, this is really happening' and he gave me his phone number. He's like 'Well, if anything is to ever come of this here's my phone number. I live in Rochester and I work at Labor Ready every day.'

q do you remember Steve's last name

a I don't. I might of written it down in my book. I know I wrote down...his name and number in my book, but that's at the house. I don't have it with me right now

q do you remember his phone number

a um um (no)

q okay. How long ago did this happen

a two weeks, a month... long than that maybe, I've only been back in town for a short bit

q okay, is this the same story that you told to the Detective earlier tonight

a no

q okay, the only difference is that you

a put Michael in Steve's place

q okay, but

a and finished off what happened instead of me just leaving

q okay, but the story you told about what happened tonight was actually the incident that happened a couple weeks, maybe a month ago

a yes

q okay. Did you tell Mike about what happened that day

a yeah

q how did he respond to that

a got very upset...he was hurt...I think that his friend had done that, had violated his trust and his respect and violated my trust and my respect...I think he felt violated just as much as I did

q okay. How did you end up back over there today

a (pausing) we were out with the baby...playing in a park with the baby and drinkin'...and one way or another a conversation... however it lead up to it...we were talkin' about something or someone mentioned Kenny...Mike, he's like 'Yeah, that dude deserves a ass whoopin'...ya know...and...we decided to go back to the apartment and drop the baby off...and um....come downtown and Mikie wanted me to show where Kenny was living where uh, where it was (inaudible)

q okay. What time were you down here, what time were you down here earlier today? What time did you start this

a we had to, it had, it had to of been before 5:30 because we called the Capital Shuttle. The Capital Shuttle's free

q okay, you said somebody mentioned Kenny's name in conversation

a it had to of been me or the friend of ours we were drinking with or Michael. Someone had mentioned his name...we all hang out with all the same people that know everyone else

q okay

a it's a pretty tight click

q and when you brought up Kenny's name did it get Michael upset

a yes...[redacted]. He was drunk. He wasn't like really drunk, he was just ya know...he was past tipsy

q okay, who's suggestion was it then to go over and square things up

a (pausing) it was his suggestion and I have to admit that I agreed

q is this the same apartment that you'd been to before

a yeah

q had Mike ever been there before

a no, apparently not if he needed me to show him where it was

q okay. What other places did you go look for him downtown

a (pausing) at his hangout spots
q can you tell me where you went
a we went to The Reef. We went to 4th Ave Tav. We went to B & R. He wasn't in any of those places so we figured that he was at home
q okay, and when you didn't find him in any of those places you went to
a his home
q and tell me what happened once you got to his home
a we knocked, I knocked on the door. Mikie was like 'That's not his apartment. That's this other guy's apartment.' I was like, 'No, this is his apartment.' He said, well, I guess it might be wrong and then I knocked on a different door...and um...but, Kenny answered the door said he wasn't receiving any company. Asked me if I was, he's like "Aren't you mad at me?" And I was like, "Yeah" and....he was....it was, and then we asked him about some...money that owed, owed us for a few years now. We knew we weren't gonna collect it but we still asked ya know, you gotta do that...and uh...we were all just standing there in the doorway....one thing lead to another, not very, didn't take
q okay, you gotta speak up
a didn't take very long for everything to happen...and then we ran downstairs, down the street and I begged Michael to catch a bus with me. I said, "Let's just catch a bus. Let's get the fudge outta here'
q when you say everything happened in the doorway, what do you mean by that
a (pausing) Kenny was stabbed
q how did Kenny get stabbed
a with a knife
q whose knife
a (pausing) maybe Michael's
q what do you mean by maybe Michael's knife
a it could of been his knife. It could of been someone else's knife
q did you see Michael stab him
a (pausing) yes, I saw Michael stab him
q did you stab him
a I did not stab him
q how many times did Michael stab him
a I think three
q okay, when you say you think, what do you mean by that
a it means I shut my eyes and I didn't really watch. I was like in shock and I think three
q what did Michael say to him when he stabbed him
a I think he called him a punk....I heard the words mother fucker....I don't quite remember what was said after that
q what else
a (pausing) well, when we were walking and the cops came and yelled for Michael and I to get on the floor and....(inaudible) I was like, "It's wet."... (inaudible) ....and I've been here ever since. They just took my clothes

q okay, I need, I need you to speak up a little bit for me
a that's it. That's it um....we saw Kenny fall down, heard him grunt. We ran like the wind as far as we could. Not as far as we could but as fast as we could...try and debate what to do next. I don't think it was all planned out what was all gonna happen or else, I think we would of talked about what we were gonna do after the fact. So I think that as far as that goes he was gonna go over there and kick his ass....I think those were the actual intentions, but since Kenny was being a punk...I think it just made Michael more angry
q was Michael mad
a infuriated
q you said infuriated
a yes, he was angry
q have you ever seen him that mad
a yeah, I've been with him for years. I've seen all sides of him
q was he in control of himself
a (pausing) I can't answer that with any.....explain more on what you think out of control (inaudible)
q would you describe, describe him as being out of control
a (pausing) no, Mike has, I don't know but he's....no...I wouldn't describe him as being (inaudible) out of control
q the first time that Mike stabbed Kenny, did you see where he stabbed him at
a (pausing) I think it was the stomach....I didn't, it was like that. It wasn't like that
q okay, the, the, hang on a minute. The tape recorder's not gonna be able to see what you're doing so you're describing his holding, his holding the knife in his hand and like punching him in the stomach with it (describing fist, thumb up, knife extending from fist toward victim)
a yes
q pardon
a yes
q okay. Did you see how many times he stabbed him after that or you're just guessing that it was two more times
a just guessing
q okay
a Mikie had asked me after we were walking, he was like, "Did you see how many times I stabbed him?" I said, "I don't know, I think you did it about three times." He's like "Three?" and I was like, "Yeah, I think so." He's like, "Do you know where this came from?" He was asking me about the cut on his hand. I was like, "Dude, I have no clue what that came from. How come you don't know?"
q did he cut himself in the process of stabbing this guy
a that's what I'm thinkin', but I'm not sure
q did Kenny do anything to fight back from this assault
a (pausing) I know he reached into his pocket....or somethin'...I don't know what
q after he was stabbed

a he saw Michael coming up. He lifted his hand...his chest open, he might of went to go strike his hand out or something and then (inaudible)
q okay, you, you gotta speak up
a okay, he lifted his hand over his head maybe to strike Michael's hand down or something and then he put his hands in his...put his right hand in his right pocket...took a step back....Michael proceeded to stab him...then his hands were like..., how do you explain this...open arms...with his hands open and he fell down...and we ran)(describing subject holding hands open, palms toward assailant)
q okay, when he's standing there with his open hands you're talking about Kenny, correct
a yeah, after, after the fact, yes
q did you see anything in his hands at that point
a (pausing) um um (no)
q okay. I asked you earlier if..
a I think he took a step back in his doorway tryin' to get back into his house, into his apartment
q okay, was there anybody else there with you when this happened
a um um (no). There might of been someone inside his apartment that's why he might of not been accepting company. I don't know. We didn't see inside of his apartment
q okay, you said there might of been somebody that's why he wasn't accepting company. When, when you knocked on the door did he answer the door right away or did he say inside he wasn't accepting company
a oh no, he answered the door. He didn't say till he um, till he realized who was there. Like I said, ever since Kenny saw me from that night forward he's been hiding from me. He's like seen me and then he goes and runs...goes and run, goes and run and goes and runs
q okay, so he saw you and Michael
a yeah. In between all of this from the time it happened at his apartment...to, to tonight, I've seen Kenny like 4 or 5, maybe 6 times and every single time and every single time I saw him he would run and hide from me, which I quite don't understand and I would kinda like go the opposite direction from which way I was comin' and try to avoid him. He opened the door, he saw Mikie and me....and then he was like, 'Well, ya know, I'm definitely not accepting any company." And we're like, 'Well, do you have any of that money that you owe us?" ya know, cuz it's like 300 bucks and he's like 'No, I don't have any of the money.' 'You owe us' and then we're like talking about ya know, how, 'How you doing? How you doing?' Ya know, back and forth and then.... when further in the conversation anyway.... and that.....was when it happened
q you said that's when it happened
a (pausing) I don't quite remember what part of the conversation, I remember there was a dead stand still and nobody talking for like a couple seconds and then it happened. I don't quite remember exactly what was said previous. I remember him asking me 'if you were mad at me' and I remember me telling him I was. I remember....talking about other things...vaguely
q okay. Are you sure that you didn't stab him

a I'm positive I did not stab him
q okay. Sylvia, is there anything else that you can think of that you wanna make known at this point
a that....I feel it was justified what happened. I feel that Mikie being my husband had a right to get hurt over the fact that his friend had tried to do that to me. I feel that..me not telling Michael about it would of been violating...a confidence and a trust in our marriage and our relationship, and I feel that that's really important to me. Michael's my best friend and I'm his...ya know, any....there isn't anything...
q is your husband a racist
a no, his not a racist
q describe his relationship with minorities
a I'm a hundred precent Mexican. His child is half Mexican
q okay. Has he ever possessed any white supremist literature
a I think someone gave him a magazine and he brought it home
q okay, but he doesn't now ordinarily practice that then
a no, gosh no, no, no Mikie's one of the most fair people you'll ever meet
q okay, anything else that you want to add at this point
a (pausing) um um (no)
q are you being completely truthful with me....this time
a I wanna add that the last time I was afraid and I told what had happened. I just took both the stories and coincided them...and tonight I just took or this time I'm just taking tonight's story
q okay, you were afraid when Detective Gies talked to you and then what you ended up doing was replacing your husband and put him into the uh, story with the first assault that happened with Kenny and you, correct
a yes
q okay. The information you gave me right now on this statement though is what actually took place
a yes
q okay. Detective Holmes, anything else
Holmes nothing
Costa Sylvia, were there any uh, threats or promises been made to you to get you to make this statement
a no
q pardon
a no
q okay. Today's date is still the 5th of August, 1999. The time is 2309.

Transcribed
JDC:jp

This will be a statement. It's concerning case number 99-6530. This will be the statement of Michael Crawford. Today's date is the 6th of August, 1999. The time is 45 minutes past midnight. This statement is being recorded at the Olympia Police Department. Also present is Detective Russ Gies.

q Mike, do you understand this statement is being recorded and is this with your consent
a yes
q would you give me your full name again and spell it please
a Michael Crawford - M I C H A E L - C R A W F O R D
q and your address
a 1919 Evergreen Park Drive
q do you have a phone number there
a um, yes, 352-2476
q okay, and uh, are you working
a no
q okay, how about your date of birth
a 11/22/77
q okay
Gies what's your apartment number
a 108
Costa okay Mike, I'm gonna go through and I'm gonna read a warning and a waiver of your constitutional rights. I know that these were read to you before, but I'm gonna go back through it again. It says: You have the right to remain silent. Anything you say can be used against you in a court of law. You're not under the age of 18, correct
a correct
q okay. You have the right at this time to an attorney of your own choosing and have him or her present before and during any questioning or the making of any statements. If you cannot afford an attorney you are entitled to have one appointed for you by a court without cost to you and have him or her present before and during questioning or the making of any statements. You have the right to exercise any of the above rights at anytime before or during questioning or the making of any statements. Do you understand each of those rights as I've explained then to you
a yes
q okay, do you have any questions about any of them
a (pausing) um, no
q okay. On the bottom again, another statement, it says: I have read or have had read to me the above explanation of my constitutional rights and I understand them. It says, I've decided not to exercise these rights at this time. It says, any attached signed statements are made freely, voluntarily without threats or promises of any kind. Since we're obviously not doing any kind of a signed statement, and we're doing it by uh, tape recording again, is this with your consent and uh, it is freely, voluntarily and being done

without any threats or promises
a yes
q okay. We came and got you about 5 minutes ago, correct
a yes
q and I told you that um, obviously I sat through an interview that you did with Detective Gies earlier and I also um, had some idea as to a conversation that he had with your wife. You two were involved in an incident that took place earlier tonight where a subject was stabbed, is that correct
a yes
q okay, and I told you just a little while ago that there was obviously some inconsistencies in the statement that you gave us and the statement your wife gave us and uh, she clarified some of the uh, facts. I told you that some of the things you told us was truthful and then some other things you told us weren't truthful, is that correct
a yes
q and I told you at this point what I would like to do is to hear from you exactly what took place this evening...in the area of the truth and not the inconsistencies that we got earlier, is that correct
a yes
q okay. What you told the Detective earlier tonight when you talked to him is not the whole truth about what happened, is that correct
a yes
q okay. Let's take this thing back from the uh, start of earlier tonight and where, where were you guys at before you ended up over at Kenny's house
a downtown
q okay, you were downtown with your wife and child
a no, my child wasn't with me downtown
q okay, were you guys at a park earlier today
a yeah, we were over at um...my friend's house and he had a um, playground and shit
q okay, what, tell me about the conversation you had. Tell me how you got on the topic of Kenny or how he came up, his name came up
a I talked to him about him trying to rape her
q okay, when did this attempted rape occur
a um...while we were broken up and she was comin' up back here to try to get back with me
q okay, do you remember how long ago that was
a no, I don't
q okay, was it a week ago, two weeks ago, three weeks ago, longer
a it was longer than three weeks ago. It was like a month, month or two ago
q okay, and you, you and your wife were split up at that point
a yeah
q okay, and she told you something happened between her and Kenny
a yes

q okay, tell me about the story. Tell me what she told you happened
a well, first she thought that I'd got, got Kenny to try to rape her or somethin' and, and I was like, no way, ya know, ya know, I'll kick his ass, somethin' ya know, I just...I, I didn't, I couldn't understand why she'd think somethin' like that ya know, and she said that he told her that and was yelling stuff about me like I told him to do it...and so, and I haven't seen him in all this time till up to today
q okay, so sometime ago your wife told you that when you were separated that he did or he made an attempt at raping her and you were upset with him about that
a yes
q okay. What happened today that led up to this incident that you had with him? Where were you guys at when his name first got mentioned
a we were at my friend's house
q okay, who, who is your friend
a Chris's
q Chris
a Martin
q Chris Martin. Where does Chris live
a in some apartments next to the apartments that we lived in
q okay, and you were over there this afternoon about what time
a I don't know
q okay, and then how did Kenny's name come up
a I don't remember
q okay, when his name came up in conversation what did that do for you
a it made me mad, mad
q okay, how mad
a like [redacted]
q okay, is that what you guys did at that point
a yes
q what, what did you do with your child
a we dropped him off at Ray and Brandy's house
q at Ray and Brandy
a where I live
q okay, friends of yours
a yeah
q okay, and then who took off to go find Kenny
a we both did
q okay, you have to tell me who we both, who do you mean
a me and Sylvia
q okay, do you remember about what time you started to look for him
a no
q okay, at the point you started to go out and look for him, did you intend to stab him at

that point
a no
q you were just gonna go find him and do what
a just, I don't know, I just wanted to confront him on it and I don't know, take it from there
q okay. You, you said earlier you were mad enough to kick his ass
a yeah
q okay, is that what you were gonna do? Is that what you intended to do
a (pausing) I wasn't sure
q okay, but you were upset about what had taken place before involving your wife, correct
a yes
q okay, where, where did you go to find him
a huh?
q where did you go to find him
a to where she, the apartment she said it happened at
q okay, had you ever been to that apartment before
a not, not when he lived there
q okay, so you didn't know where he lived
a no
q okay, is that why you took your wife with you
a yeah
q okay
a and I wanted to confirm stories and everything
q okay, before you went to the apartment where did you go look for him then
a (pausing) um...we stopped in a couple bars
q do you remember the bars
a uh...I know The Reef was one of 'em
q okay, do you remember any of the other ones
a uh, 4th Ave I think...is the name of it
q 4th Avenue Tavern
a yeah
q okay, anything else
a uh, B & R
q what's, now what's B & R
a Bread and Roses
q Bread and Roses. Are these places he normally hangs out at
a uh...yeah, I guess
q okay, and you didn't find him there
a no
q do you remember if you talked to anybody or saw anybody at these places
a no
q did you ask anybody when you went in there if they knew Kenny or knew where he was at

a I don't remember
q okay, when you didn't find him at those places then where did you go
a um, to the apartments
q okay, tell me what happened once you got to the apartment
a um, we went up and knocked on the wrong door and he ended up comin' out into the hallway
q okay, is there two doors at the top of the stairs
a there was three. There's, there's one...that's like....the top of the stairs is like this and there's a door here and a door here, and a door here...and we came and we knocked on this door...and then he came out of this door
q okay. When he came out of the door, what did you guys say to each other
a well, at first I asked him about the money that he had owed us ya know, he had owed us for a few years. It's kinda not really a big deal anymore. I've kinda wrote it off ya know, but um...I didn't even have to ask him what happened with Sylvia cuz he, he already started askin' her if she was mad at him and stuff...and that told me right there that there was some truth to what she was sayin' and shit and ya know, then I, I, I started in at him fuckin' ya know, sayin' 'What the fuck dude? What'd you do?' ya know, and he started gettin' a attitude and fuckin' one thing lead to another and fuckin' we got into a altercation and I stabbed him
q okay, tell me what was going, tell me what was going through your mind when he, when he uh, started arguing with you at that point
a well
q tell me what you were feeling
a I was feeling angry and fuckin'...scared and...just...the whole combination. Just adrenalin goin' through me and....
q where, where was uh, Sylvia when you first stabbed him
a um.....I'm not sure, somewhere close
q okay. I'm, I'm gonna ask you a question now, and I'm not doing it to offend you or anything, but is there any chance at all that Sylvia stabbed him
a (pausing) I wouldn't say that
q okay, what do you mean you wouldn't say that
a even if she did, I wouldn't say I'm just being honest
q well, I, I understand that she was upset with him....you're telling me that you stabbed him, right
a (pausing) I believe so
q okay, what do you mean by you believe so
a (no audible response)
Gies be honest with us Mike
a (no audible response)
q come on
a (long pause) I don't know if I can do this

Costa well, I know it's tough, but again, it has to do with the truth, and you're...
a (sighing)
q I have my idea as to how I think it happened, and I guess what I'm saying to you is, is that are you, are you willing to take the blame for something that maybe you didn't do
a (no audible response)
Gies help us out Michael, tell us the truth
a (no audible response)
Costa how did Kenny get stabbed
a (pausing) when we all started fightin' and he got stabbed
q okay, what do you mean we all started fighting
a well, it was...she was right there in the mix of it all, it was really dark in there
q who had the knife
a (pausing) I had the knife
q what hand was your knife in
a I don't remember
q you don't remember if it was in your left hand, your right hand
a no
q how many times did you stab him
a I don't know
q you don't remember
a um um (no)
q do you remember the first time you stabbed him
a (pausing) it was really dark
q okay, but you don't need to see no matter how dark it is to know how many times you stabbed him. Do you know what I'm saying? And we've already gone over the hump with the truth of the incident of why you went over there in the first place and it had to do because this guy had done something to your wife and you were upset with him. You told us you were aggravated. You didn't deny that. You didn't uh, when you first sat down with the Detective, you didn't deny that you were mad. You turned around and told him that you were enraged, and that's understandable. I guess at this point is, is that I'm, I'm ju[illegible]oking for the truth as to what happened. I mean, you're not arguing that you didn't st[illegible]his guy, you're not arguing that you were upset, but we've got some minute details that aren't clear and that's what I'm asking you
a where did you come up with that she stabbed him?...can I have some more water, please
Gies sure
Costa that's what I'm asking you
a (pausing) I didn't see her stab anybody
q okay. How did you cut your hand
a I honest to god don't really know the truth to that question
Gies did you grab Kenny, maybe grabbed onto his shirt or onto his body
a probably

a probably
q during the confrontation
a probably
Costa okay, Mike, let me, let, let me ask you a question. I know why you went over there now um, what did uh, what did Kenny do after he was stabbed
a he started, just kept fightin'
q okay. Did you ever see anything in his hands
a I think so, but I'm not positive
q okay, when you think so, what do you mean by that
a I could a swore I seen him goin' for somethin' before, right before everything happened. He was like reachin', fiddlin' around down here and stuff...and I just...I don't know, I think, this is just a possibility, but I think, I think that he pulled somethin' out and I grabbed for it and that's how I got cut...but I'm not positive. I, I my mind goes blank when things like this happen. I mean, I just, I remember things wrong, I remember things that just doesn't, don't make sense to me later
q okay
a I don't know why
q okay. Let me ask you a question then going back over the details tonight. Are you clear about why you guys went over there
a yeah
q you're clear about the details up to that
a yeah
q the stops you made at the other bars and the taverns looking for him
a yeah
q okay
Gies why Sylvia, do you think, is as upset as you when you guys walked over there
a (pausing) yeah
q did she express her anger or attitude that we're gonna go kick his butt
a (pausing) I don't remember
q but she was upset
a she was upset
q she certainly knew that you were going over there with the intention of making things right
a yeah
q be honest with you Michael, with us...did, did she have possession of the knife? Please be honest
a (pausing) I don't know
q could she of had possession of the knife
a she could of
q and how would she have gotten possession of the knife
a (pausing) I don't know

q I mean, I'm trying to figure out a scenario of her pulling it out of your sheath or it would make more sense if, I guess, if you handed it to her before knocking on the door or something of that nature
a I wouldn't, I wouldn't hand her the knife
q you would not
a I would not hand her the knife
q okay, did she take it out of your sheath Michael
a I could see her doing that if I would if I would of got into a altercation
q do you recall taking the knife out of your sheath
a I don't remember takin' the knife out of my sheath
q okay. Do you recall one of the three stab wounds being made by her or two of the three or three of the three? Be honest
a I don't, I don't recall
Costa okay. Mike, is there any uh, not to prolong this, is there any doubt in your mind about the things we've talked about earlier, about how you ended up over there
a about how we ended up over there?
q right
a (no audible response)
q is that clear
a it's not real clear. I know that we stopped and looked in some bars and that we stopped and looked in B & R
q okay, and you're clear about that
a yeah, I'm clear about that
q okay, and you're clear about being angry and going over there to try to...even up the situation with what he did to your wife from a prior incident
a yeah um, part of it, I wasn't sure if I believed it or not, I needed, I needed hear, hear from him ya know...I needed to see what he said
q okay, and once you heard what he said
a oh, I started talkin' shit and he started talkin' shit, and...we got in a fight
q and then he got stabbed
a yeah
q okay
Gies Mike, do you carry that knife pretty much all the time
a sometimes I do, sometimes I don't
q how long have you carried it on and off
a um, a few months
q why
a protection
q are you familiar with it? I mean, you're, you carry it on and off, you're familiar with how to grab it and use it
a well, I've never had to use it in a situation before

a well, I just...um, actually she bought that knife for me down in Portland...it's just the only knife I've had
q okay
Costa Mike, anything else you think you need to add to this statement at this point
a (pausing) um....(long pause) _____...no
Gies Mike, be honest with us please. Did she use the knife too
a (pausing) did she use the knife too?...I, I really don't think so
Costa okay, anything else Mike
a huh?
q anything else you need to add to this statement
a (pausing) um....no
Gies let me ask one more question Detective. Do you specifically recall stabbing him the three times
a I don't, I, actually I blacked out through the whole thing
q do you specifically recall the first time though
a I really, actually, I don't. I had asked, I had asked the nurse in the hospital is how I really found out. I asked the nurse. I go, 'Did I, did I get him?'...and she said, 'Yeah, you got him.'
q okay
Costa okay, this will uh, conclude the statement. Today's date is still the 6th of August, 1999. The time is 1:07
Gies be turning off the tape at this time.

Transcribed:
JDC/REG:jp

APPENDIX C

FILED
IN COUNTY CLERK'S OFFICE
THURSTON COUNTY, WA

99 NOV 24 A9:52

BETTY J. GOULD, CLERK

BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON
IN AND FOR THURSTON COUNTY

NO. 99-1-1889-7

STATE OF WASHINGTON,
Plaintiff,

vs.

SYLVIA MARGARITA CRAWFORD
WFA;5'3";100#;HZL; BRN;
DOB: 03-10-78
SID: 19680423
C/O THURSTON COUNTY JAIL
OLYMPIA WA 98502
BOOKING NO. B83238
Defendant.

INFORMATION

ROBERT LUND
Deputy Prosecuting Attorney

CO-DEFENDANT:
NONE

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, RCW 9A.76.070

In that the defendant, SYLVIA MARGARITA CRAWFORD, in the County of Thurston, State of Washington, on or about the 5th day of August, 1999, with intent to prevent, hinder, or delay the apprehension or prosecution of MICHAEL CRAWFORD who she knew had committed or was being sought by law enforcement officials for the commission of a Class "A" felony, to-wit: First Degree Assault, prevented or obstructed, by use of deception, anyone from performing an act that might aid in the discovery or apprehension of such person.

DATED this 23 day of NOVEMBER, 1999.

ROBERT LUND, WSBA #23177
Deputy Prosecuting Attorney

W.S.P. IDENT.
005265720

OK

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

APPENDIX D

FILED
[illegible] COUNTY WA

99 DEC 8 P4: 13

[illegible] GOULD, CLERK

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

NO. 99-1-1889-7

STATE OF WASHINGTON,
Plaintiff,

vs.

SYLVIA MARGARITA CRAWFORD
WFA;5'3";100#;HZL; BRN;
DOB: 03-10-78
SID: 19680423
C/O THURSTON COUNTY JAIL
OLYMPIA WA 98502
BOOKING NO. B83238
Defendant.

FIRST AMENDED
INFORMATION ~~DEPUTY~~

ROBERT LUND
Deputy Prosecuting Attorney

CO-DEFENDANT:
NONE

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

COUNT I: ASSAULT IN THE SECOND DEGREE, RCW 9A.36.021(1)(a) & (1)(c)

In that the defendant, SYLVIA MARGARITA CRAWFORD, as a principal or an accomplice, in the County of Thurston, State of Washington, on or about the 5th day of August, 1999, did intentionally assault Kenneth Lee with a deadly weapon, to-wit: a knife, and thereby recklessly inflict substantial bodily harm.

COUNT II: RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, RCW 9A.76.070

In that the defendant, SYLVIA MARGARITA CRAWFORD, in the County of Thurston, State of Washington, on or about the 5th day of August, 1999, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who she knew had committed a crime or is being sought by law enforcement officials for the commission of a crime, prevented or obstructed, by use of deception, anyone from performing an act that might aid in the discovery or apprehension of such person, rendered criminal assistance to a person who committed a class A felony, to-wit: assault in the first degree while armed with a deadly weapon.

DATED this 8 day of DECEMBER, 1999.

ROBERT LUND, WSBA #23177
Deputy Prosecuting Attorney

W.S.P. IDENT.
005265720

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

OK

APPENDIX E

FILED
SUPERIOR COURT
THURSTON COUNTY, WASH.

00 JAN 18 PM 2:13

BETTY J. GOULD, CLERK

BY _____ DEPUTY

IN THE SUPERIOR COURT OF WASHINGTON IN AND FOR THURSTON COUNTY

STATE OF WASHINGTON,
Plaintiff,

vs.

SYLVIA MARGARITA CRAWFORD
WFA;5'3";100#;HZL; BRN;
DOB: 03-10-78
SID: 19680423
C/O THURSTON COUNTY JAIL
OLYMPIA WA 98502
BOOKING NO. B83238
Defendant.

NO. 99-1-1889-7

SECOND AMENDED
INFORMATION

ROBERT LUND
Deputy Prosecuting Attorney

CO-DEFENDANT:
NONE

Comes now the Prosecuting Attorney in and for Thurston County, Washington, and charges the defendant with the following crime:

COUNT I: ASSAULT IN THE THIRD DEGREE, RCW 9A.36.031 (1)(f)

In that the defendant, SYLVIA MARGARITA CRAWFORD, in the County of Thurston, State of Washington, on or about the 5th day of August, 1999, with criminal negligence did cause bodily harm accompanied by substantial pain that did extend for a period sufficient to cause considerable suffering to Kenneth Lee.

COUNT II: RENDERING CRIMINAL ASSISTANCE IN THE FIRST DEGREE, RCW 9A.76.070

In that the defendant, SYLVIA MARGARITA CRAWFORD, in the County of Thurston, State of Washington, on or about the 5th day of August, 1999, with intent to prevent, hinder, or delay the apprehension or prosecution of another person who she knew had committed a crime or is being sought by law enforcement officials for the commission of a crime, prevented or obstructed, by use of deception, anyone from performing an act that might aid in the discovery or apprehension of such person, rendered criminal assistance to a person who committed a class A felony, to-wit: assault in the first degree while armed with a deadly weapon.

DATED this 18 day of JANUARY, 2000.

W.S.P. IDENT.
005265720

ROBERT LUND, WSBA #23177
Deputy Prosecuting Attorney

EDWARD G. HOLM
Thurston County Prosecuting Attorney
2000 Lakeridge Drive S.W.
Olympia, WA 98502
(360) 786-5540 Fax (360) 754-3358

APPENDIX F

SUPERIOR COURT OF WASHING
COUNTY OF THURSTON

STATE OF WASHINGTON, Plaintiff,

v.

SYLVIA MARGARITA CRAWFORD
Defendant.
Booking No. B83238
SID: 19680423
FBI: NONE
If no SID, use DOB: 03-10-78

W.S.P. IDENT.
005265720

No. 99-1-1889-7

FILED
SUPERIOR COURT
THURSTON COUNTY WASH.
00 FEB 15 A9:26

JUDGMENT AND SENTENCE (JS)
[ ] Prison
[X] Jail One Year or Less
[ ] First Time Offender
[ ] Special Sexual Offender Sentencing Alternative
[ ] Special Drug Offender Sentencing Alternative

I. HEARING

1.1 A sentencing hearing was held on February 15, 2000, and the defendant, the defendant's lawyer and the deputy prosecuting attorney were present.

II. FINDINGS

There being no reason why judgment should not be pronounced, the Court FINDS:

2.1 CURRENT OFFENSE(S): The defendant was found guilty on JANUARY 18, 2000 by [X] plea [ ] jury verdict [ ] bench trial of:

COUNT	CRIME	RCW	DATE OF CRIME
ONE	ASSAULT, THIRD DEGREE	9A.36.031(1)(f)	AUGUST 5, 1999
TWO	RENDERING CRIMINAL ASSISTANCE, FIRST DEGREE	9A.76.070	AUGUST 5, 1999

as charged in the (SECOND AMENDED) Information

[ ] Additional current offenses are attached in Appendix 2.1
[ ] A special verdict/finding for use of **a firearm** was returned on Count(s)_____ RCW 9.94A.125, .310
[ ] A special verdict/finding for use of **a deadly weapon other than a firearm** was returned on Count(s) _____. RCW 9.94A.125, .310
[ ] A special verdict/finding of **sexual motivation** was returned on Count(s) _____. RCW 9.94A.127
[ ] A special verdict/finding for **Violation of the Uniform Controlled Substances Act** was returned on Count(s)_____, RCW 69.50.401 and RCW 69.50.435, taking place in a school, school bus, within 1000 feet of the perimeter of a school grounds or within 1000 feet of a school bus route stop designated by the school district; or in a public park, in a public transit vehicle, or in a public stop shelter.
[ ] The defendant was convicted of **vehicular homicide** which was proximately caused by a person driving a vehicle while under the influence of intoxicating liquor or drug or by the operation of a vehicle in a reckless manner and is therefore a violent offense. RCW 9.94A.030

[ ] Current offenses encompassing the same criminal conduct and counting as one crime in determining the offender score are (RCW 9.94A.400):

[ ] Other current conviction listed under different cause numbers used in calculating the offender score are (list offense and cause number):

IASS 99-9-10181-6

OK

2.2 **CRIMINAL HISTORY:** Prior convictions constituting criminal history for purposes of calculating the offender score are (RCW 9.94A.360)

CRIME	DATE OF SENTENCE	SENTENCING COURT (County & State)	DATE OF CRIME	A or J Adult or Juv.	TYPE OF CRIME

[ ] Additional criminal history is attached in Appendix 2.2

[ ] The defendant committed a current offense while on community placement (adds one point to score). RCW 9.94A.360

[ ] The court finds that the following prior convictions are one offense for purposes of determining the offender score (RCW 9.94A.360):

2.3 **SENTENCING DATA:**

COUNT NO.	OFFENDER SCORE	SERIOUSNESS LEVEL	STANDARD RANGE (not including enhancements)	Plus enhancement for Firearm (F), other deadly weapon finding (D), or VUCSA (V) in a protected zone	Total STANDARD RANGE (including enhancements)	MAXIMUM TERM
I	0	III	1-3 mo	-	1-3 mo.	5 Years (c)
II	N/A	N/A	0-12 mo.	-	0-12 mo.	1 Year (6m)

[ ] Additional current offense sentencing data in Appendix 2.3

2.4 [ ] **EXCEPTIONAL SENTENCE:** Substantial and compelling reasons exist which justify an exceptional sentence [ ] above [ ] within [ ] below the standard range for

Count(s)_____. Findings of fact and conclusions of law are attached in Appendix 2.4. The Prosecuting Attorney [ ] did [ ] did not recommend a similar sentence.

2.5 **ABILITY TO PAY LEGAL FINANCIAL OBLIGATIONS.** The court has considered the total amount owing, the defendant's past, present and future ability to pay legal financial obligations, including the defendant's financial resources and the likelihood that the defendant's status will change. The court finds that the defendant has the ability or likely future ability to pay the legal financial obligations imposed herein. RCW 9.94A.142

[ ] The following extraordinary circumstances exist that make restitution inappropriate (RCW 9.94A.142):_____

2.6 For violent offenses, most serious offenses, or armed offenders recommended sentencing agreements or plea agreements are [ ] attached [ ] as follows: _____

III. JUDGMENT

3.1 The defendant is **GUILTY** of the Counts and Charges listed in paragraph 2.1 and Appendix 2.1

3.2 [ ] The Court **DISMISSES** Counts _____

3.3 [ ] The defendant is found **NOT GUILTY** of Counts _____

IV. SENTENCE AND ORDER

IT IS ORDERED:

4.1 Defendant shall pay to the Clerk of the Court

$ 737.84 Restitution to: DEPT. OF Labor & Industries - Victim comp program

JASS CODE $_____ Restitution to: P.O. Box 44520, Claim ID = VS 04727

RTN/RJN $_____ Restitution to: Olympia, WA 98504
(Name and Address-address may be withheld and provided confidentially to Clerk's Office)

PCV $ 500 Victim Assessment RCW 7.68.035

CRC $ 110 Court costs, including: RCW 9.94A.030, 9.94A.120, 10.01.160, 10.46.190
Criminal Filing fee $ 110 FRC
Witness costs $_____ WFR
Sheriff service fees $_____ SFR/SFS/SFW/SRF
Jury demand fee $_____ JFR
Other $_____

PUB $_____ Fees for court appointed attorney RCW 9.94A.030

WRF $_____ Court appointed defense expert and other defense costs RCW 9.94A.030

FCM $_____ Fine RCW 9A.20.021; [ ] VUSCA additional fine deferred due to indigency RCW 69.50.430

CDF/LDI/ FCD/NTF/SAD/SDI $_____ Drug enforcement fund of _____ RCW 9.94A.030

CLF $_____ Crime lab fee [ ] deferred due to indigency RCW 43.43.690

EXT $_____ Extradition costs RCW 9.94A.120

$_____ Emergency response costs (Vehicular Assault, Vehicular Homicide only, $1,000 maximum) RCW 38.52.430

$_____ Other costs for: _____

$1347.84 TOTAL RCW 9.94A.145

[X] The above total does not include all restitution or other legal financial obligations, which may be set by later order of the court. An agreed restitution order may be entered. RCW 9.94A.142. A restitution hearing:
[ ] shall be set by the prosecutor
[X] is ~~scheduled for~~ RESERVED

[ ] **RESTITUTION**. Schedule attached, Appendix 4.1

[X] Restitution ordered above shall be paid jointly and severally with:

NAME of other defendant	CAUSE NUMBER	(Victim Name)	(Amount$)
RJN MICHAEL D. CRAWFORD	99-1-1205-8	KENNETH LEE	$ 737.84

[ ] The Department of Corrections may immediately issue a Notice of Payroll Deduction. RCW 9.94A.200010

All payments shall be made in accordance with the policies of the clerk and on a schedule established by the Department of Corrections, commencing immediately, unless the court specifically sets forth the rate here: Not less than $ _____ per month commencing _____. RCW 9.94A.145

[ ] In addition to the other costs imposed herein the Court finds that the defendant has the means to pay for the cost of incarceration and is ordered to pay such costs at the statutory rate. RCW 9.94A.145

[X] The defendant shall pay the costs of services to collect unpaid legal financial obligations. RCW 36.18.190

The financial obligations imposed in this judgment shall bear interest from the date of the Judgment until payment in full, at the rate applicable to civil judgments. RCW 10.82.090. An award of costs on appeal against the defendant may be added to the total legal financial obligations. RCW 10.73

4.2 [ ] HIV TESTING. The Health Department or designee shall test and counsel the defendant for HIV as soon as possible and the defendant shall fully cooperate in the testing. RCW 70.24.340

[ ] DNA TESTING. The defendant shall have a blood sample drawn for purposes of DNA identification analysis and the defendant shall fully cooperate in the testing. The appropriate agency, the county of Department of Corrections, shall be responsible for obtaining the sample prior to the defendant's release from confinement. RCW 43.43.754

4.3 The defendant shall not use, own, or possess firearms or ammunition while under the supervision of the Department of Corrections. RCW 9.94A.120

4.4 The Defendant shall not have contact with KENNETH LEE (name, DOB) including, but not limited to, personal, verbal, telephonic, written or contact through a third party for 5 years (not to exceed the maximum statutory sentence.).

[ ] Domestic Violence Protection Order or Anti-Harassment Order is attached as Appendix 4.4.

4.5 **OTHER**: OBLIGATIONS OF THE DEFENDANT:

1. OBTAIN DRUG EVALUATION AND FOLLOW TREATMENT.
2. NO USE OF CONTROLLED SUBSTANCES WITHOUT A PRESCRIPTION.
3. UNDERGO RANDOM UA'S.
4. HAVE NO FURTHER LAW VIOLATIONS.

4.6 **JAIL ONE YEAR OR LESS**. *[Do not use if Using "First Offender" Option]* The defendant is sentenced as follows:

(a) **CONFINEMENT**. RCW 9. Defendant is sentenced to the following term of confinement in the custody of the custody of the county jail:

3 ~~days~~/months on Count I _____ days/months on Count ____

9 ~~days~~/months on Count II _____ days/months on Count ____

_____days/months on Count _____ _____ days/months on Count ____

Actual number of ~~days~~/months of total confinement ordered is: 9

All counts shall be served concurrently, except for the following which shall be served consecutively: _____

The sentence herein shall run consecutively with the sentence in cause number(s) _____

but concurrently to any other felony cause not referred to in this Judgment. RCW 9.94A.400

Confinement shall commence immediately unless otherwise set forth here: _____

[ ] **PARTIAL CONFINEMENT**. Defendant may serve the sentence, if eligible and approved, in partial confinement in the following programs, subject to the following conditions: JAIL time does not commence until space available

[ ] work crew RCW 9.94A.135 [X] home detention RCW 9.94A.180, .190 = 6 months

[X] work release RCW 9.94A.180 = 3 months (or all on work release if defendant chooses) in OPTION Program

[ ] **ALTERNATIVE CONVERSION**. RCW 9.94A.380. _____days of total confinement ordered above are hereby converted to hours of community service (8 hours = 1 day, nonviolent offenders only, 30 days maximum) under the supervision of the Department of Corrections to be completed on a schedule established by the defendant's community corrections officer but not less than _____hours per month

[ ] **Alternatives to total confinement** were not used because of: _____
[ ] criminal history [ ] failure to appear (finding required for nonviolent offenders only) RCW 9.94A.380

(b) The defendant shall receive credit for time served prior to sentencing if that confinement was solely under this cause number. RCW 9.94A.120. The time served shall be computed by the jail unless the credit for time served prior to sentencing is specifically set forth by the court: _____

4.7 **COMMUNITY SUPERVISION**. RCW 9.94A.120. Defendant shall serve 24 months (up to 24 months) in community supervision. Defendant shall report to the Department of Corrections, 3700 Martin Way Suite 104 Olympia WA 98504-1121 _____(address of office) not later than 72 hours after release from custody and the defendant shall comply with the instructions, rules and regulations of the Department for the conduct of the defendant during the period of community supervision, shall obey all laws, and shall comply with any other conditions of community supervision stated in this Judgement and Sentence:

[X] remain within prescribed geographical boundaries: [X] notify the court or community corrections officeradvance of any change in defendant's address or employment

The conditions of community supervision shall begin immediately unless otherwise set forth here: _____

4.8 **OFF LIMITS ORDER** (known drug trafficker) RCW 10.66.020. The following areas are off limits to the defendant while under the supervision of the County Jail or Department of Corrections: _____

V. NOTICES AND SIGNATURES

5.1 **COLLATERAL ATTACK ON JUDGMENT**. Any petition or motion for collateral attack on this judgment and sentence, including but not limited to any personal restraint petition, state habeas corpus petition, motion to vacate judgment, motion to withdraw guilty plea,motion for new trial or motion to arrest judgment, must be filed within one year of the final judgment in this matter, except as provided for in RCW 10.73.100. RCW 10.73.090

5.2 **LENGTH OF SUPERVISION**. The defendant shall remain under the court's jurisdiction and the supervision of the Department of Corrections for a period up to ten years from the date of sentence or releasee from confinement, whichever is longer, to assure payment of all legal financial obligations. RCW 9.94A.145.

5.3 **NOTICE OF INCOME-WITHHOLDING ACTION.** If the court has not ordered an immediate notice of payroll deduction in paragraph 4.1, you are notified that the Department of Corrections may issue a notice of payroll deduction without notice to you if you are more than 30 days past due in monthly payments in an amount equal to or greater than the amount payable for one month. RCW 9.94A.200010. Other income-withholding action under RCW 9.94A may be taken without further notice. RCW 9.94A.200030

5.4 **RESTITUTION HEARING**.
[ ] Defendant waives any right to be present at any restitution hearing (sign initials): _____

5.5 Any violation of this Judgment and Sentence is punishable by up to 60 days of confinement per violation. RCW 9.94A.200

Cross off if not applicable:

5.6 **FIREARMS**. You may not own, use or possess any firearm unless your right to do so is restored by a court of record. (The court clerk shall forward a copy of the defendant's driver's license, identicard, or comparable identification, to the Department of Licensing along with the date of conviction or commitment). RCW 9.41.040, 9.41.047

~~5.7 **SEX OFFENDER REGISTRATION**. RCW 9A.44.130, 10.01.200. Because this crime involves a sex offense, you are required to register with he sheriff of the county of the state of Washington where you reside. You must register immediately upon being sentenced unless you are in custody, in which case you must register within 24 hours of your release.~~
~~If you leave the state following your sentencing or release from custody but later move back to Washington, you must register within 30 days after moving to this state or within 24 hours after doing so if you are under the jurisdiction of this state's Department of Corrections.~~
~~If you change your residence within a county, you must send written notice of your change of residence to the sheriff within 10 days of moving. If you change your residence to a new county within this state, you must register with he sheriff of the new county and you must give written notice of your change of address to the sheriff of the county where last registered, both within 10 days of moving. If you move out Washington state, you must also send written notice within 10 days of moving to the county sheriff with whom you last registered in Washington state.~~

5.8 **OTHER**: _____

Done in Open Court in the presence of the defendant this date: FEBRUARY 15, 2000

JUDGE Print name: RICHARD A. STROPHY

Deputy Prosecuting Attorney
WSBA#23177
Print name: ROBERT LUND

Attorney for Defendant
WSBA#15990
Print name: JEAN MEYN

Defendant

Translator signature/Print name: _____
I am a certified interpreter of, or the court has found me otherwise qualified to interpret, the _____ language, which the defendant understands. I translated this Judgment and Sentence for the defendant into that language.

CAUSE NUMBER of this case: 99-1-1889-7.

I, Betty L. Gould, Clerk of this Court, certify that the foregoing is a full, true and correct copy of the Judgment and Sentence in the above-entitled action, now on record in this office.

WITNESS my hand and seal of the said Superior Court affixed this date: _____.

Clerk of said County and State, by: _____, Deputy Clerk

IDENTIFICATION OF DEFENDANT

SID No. 19680423 (If no SID take fingerprint card for State Patrol) Date of Birth 03-10-78

FBI No. NONE Local ID No. B83238

PCN No. _____ Other _____

Alias name, SSN, DOB: _____

Race:			**Ethnicity:**	**Sex:**
[ ] Asian/Pacific Islander	[ ] Black/ African-American	[X] Caucasian	[ ] Hispanic	[ ] Male
[ ] Native American	[ ] Other: _____		[ ] Non-hispanic	[X] Female

FINGERPRINTS I attest that I saw the same defendant who appeared in Court on this document affix his or her fingerprints and signature thereto.

Clerk of the Court: Darlene Tiffany, Deputy Clerk. Dated: 2-15-00

DEFENDANT'S SIGNATURE: Sylvia M. Crafd

Left 4 fingers taken simultaneously	Left Thumb	Right Thumb	Right 4 fingers taken simultaneously

APPENDIX G

Supreme Court of Washington,
En Banc.

STATE of Washington, Petitioner,
v.
Michael D. **CRAWFORD**, Respondent.

No. 71683-8.

Argued March 5, 2002.
Decided Sept. 26, 2002.

Defendant was convicted, after a jury trial in the Superior Court, Thurston County, Richard A. Strophy, J., of first-degree assault while armed with deadly weapon. Defendant appealed. The Court of Appeals reversed. Review was granted. The Supreme Court, Bridge, J., held that: (1) defendant's assertion of marital privilege did not waive his confrontation rights as to his wife's hearsay statements, and (2) the wife's hearsay statements were sufficiently reliable to be admitted under the Confrontation Clause.

Court of Appeals reversed; conviction reinstated.

West Headnotes

[1] Criminal Law ⇐662.80
110k662.80

Defendant did not waive his Confrontation Clause rights regarding his wife's tape-recorded hearsay statements to police officers, which were admitted in the prosecution for assault, where defendant exercised his marital privilege to prevent his wife from testifying. U.S.C.A. Const.Amend. 6; West's RCWA 5.60.060(1).

[2] Criminal Law ⇐662.80
110k662.80

Courts are hesitant to accept waiver of a defendant's Sixth Amendment confrontation rights, because of their significance in the trial process. U.S.C.A. Const.Amend. 6.

[3] Criminal Law ⇐662.80
110k662.80

A defendant may waive the right to confront witnesses against him when his own misconduct is responsible for a witness' unavailability at trial. U.S.C.A. Const.Amend. 6.

[4] Criminal Law ⇐662.8
110k662.8

Simply because an extrajudicial statement falls within a hearsay exception does not mean that it will satisfy the Sixth Amendment right to confrontation; therefore, the court will employ specific safeguards to ensure that the proffered evidence offers some reliability in terms of the declarant's perception memory, and credibility, which is a function traditionally performed by cross-examination. U.S.C.A. Const.Amend. 6.

[5] Criminal Law ⇐662.8
110k662.8

Hearsay statements, to be admissible under the Confrontation Clause, must be admissible under the rules of evidence, and the statements must contain sufficient indicia of reliability and trustworthiness. U.S.C.A. Const.Amend. 6.

[6] Criminal Law ⇐662.8
110k662.8

Admissibility under a firmly-rooted exception to the hearsay rule will satisfy the requirement that extrajudicial statements must contain sufficient indicia of reliability and trustworthiness, as element for admission under Confrontation Clause. U.S.C.A. Const.Amend. 6.

[7] Criminal Law ⇐662.8
110k662.8

If the hearsay exception under which the extrajudicial statements are admissible is not firmly rooted, then the court will consider the following nonexclusive factors to determine the relative reliability of hearsay statements, for purposes of Confrontation Clause analysis: (1) whether declarant, at time of making statement, had apparent motive to lie; (2) whether declarant's general character suggests trustworthiness; (3) whether more than one person heard the statement; (4) spontaneity of the statement; (5) whether trustworthiness is suggested from timing of statement and relationship between declarant and witness; (6) whether statement contains express

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assertions of past fact; (7) whether declarant's lack of knowledge could be established by cross-examination; (8) remoteness of possibility that declarant's recollection is faulty; and (9) whether surrounding circumstances suggest that declarant misrepresented defendant's involvement. U.S.C.A. Const.Amend. 6.

[8] Criminal Law ⇐419(2)
110k419(2)

Statements that defendant's wife made to police were not "hearsay," in prosecution for assault; they were not offered to prove the truth of the matters asserted, and instead were offered to demonstrate that defendant and his wife lied about the circumstances preceding the assault. ER 801(c).

[9] Criminal Law ⇐419(2)
110k419(2)

[9] Criminal Law ⇐662.8
110k662.8

Out-of-court statements raise hearsay and Confrontation Clause objections only when they are offered to prove the truth of the matter asserted. U.S.C.A. Const.Amend. 6; ER 801(c).

[10] Criminal Law ⇐419(1.5)
110k419(1.5)

[10] Criminal Law ⇐419(5)
110k419(5)

The second of two statements that defendant's wife made to police constituted "hearsay," in prosecution for assault; the wife was unavailable as witness because husband invoked the marital privilege, and the statements were offered to prove the truth of the matters asserted. West's RCWA 5.60.060(1); ER 801(c).

[11] Criminal Law ⇐662.8
110k662.8

A statement against penal interest is not considered a firmly-rooted exception to the hearsay rule, for purpose of Confrontation Clause analysis for admission of extrajudicial statements; thus, such a statement, if it inculpates the defendant, is admissible against defendant only when it bears adequate indicia of reliability. U.S.C.A. Const.Amend. 6; ER 804(b)(3).

[12] Criminal Law ⇐417(15)
110k417(15)

If self-exculpatory statements are included within a statement that is generally inculpatory to the declarant, only those portions that are actually self-inculpatory are admissible, under the hearsay exception for statements against penal interest. ER 804(b)(3).

[13] Criminal Law ⇐417(15)
110k417(15)

Hearsay statements of defendant's nontestifying wife to police, that defendant was "infuriated" and "past tipsy" when the assault occurred, that defendant said the victim "deserves a[n] ass whoopin'," and that victim may have reached into his pocket, possibly for a weapon, but was not holding a weapon when defendant stabbed him, were against wife's penal interest, as element for admission under hearsay exception for statements against penal interest, where wife had potential accomplice liability for the assault; wife had shown defendant where victim could be found, wife was present throughout the assault, wife did not turn to police when she had the opportunity, wife's statements did not shift blame to defendant, and wife's accomplice liability would be higher if defendant's criminal liability was higher. West's RCWA 9A.08.020(3)(a); ER 804(b)(3).

[14] Criminal Law ⇐662.10
110k662.10

A co-defendant's confession is presumed unreliable, for purposes of analyzing its admissibility under the Confrontation Clause. U.S.C.A. Const.Amend. 6.

[15] Criminal Law ⇐662.10
110k662.10

When a co-defendant's confession is virtually identical, i.e., interlocks, to the defendant's confession, it may be deemed reliable, for purposes of Confrontation Clause analysis regarding admissibility of the co-defendant's confession. U.S.C.A. Const.Amend. 6.

[16] Criminal Law ⇐662.8
110k662.8

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Statements that defendant and his wife gave to police were virtually identical and interlocking, so that wife's hearsay statements to police, which were otherwise admissible under a hearsay exception as statements against her penal interest, were sufficiently reliable, for purposes of Confrontation Clause analysis in prosecution for assault; defendant and his wife were equally unsure whether victim had been holding a weapon, and neither defendant nor his wife clearly stated that victim had a weapon in hand from which defendant was simply defending himself. U.S.C.A. Const.Amend. 6; ER 804(b)(3)

.

**657 *426 Edward Holm, Thurston County Prosecutor, Steven Sherman, Deputy, Olympia, for Petitioner.

Thomas Doyle, Hansville, Patricia Pethick, Tacoma, for Respondent.

**658 BRIDGE, J.

This case presents two issues: (1) whether a defendant waives an objection under the confrontation *427 clause to the admission of his wife's hearsay statements by exercising his marital privilege to prevent his spouse from testifying; and (2) whether the wife's statements are otherwise admissible as an exception to the hearsay rule or as an interlocking confession. We hold that a defendant does not waive his confrontation rights when he invokes the marital privilege. We also conclude that the statements here are admissible because the wife's statements interlock with those of her husband and hence provide adequate indicia of reliability to satisfy confrontation clause concerns.

FACTS

On August 5, 1999, Michael Crawford stabbed Richard Rubin Kenneth Lee at Lee's apartment. *State v. Crawford*, noted at 107 Wash.App. 1025, 2001 WL 850119, at *1 (2001). Police arrested Crawford that evening and they collected two taped statements from both Crawford and his wife, Sylvia, who had been present at the time of the assault. Id. The first statements contained roughly the same account of the attack: the three had collected at Lee's house; Crawford left to buy alcohol; when he returned, Lee was making sexual advances toward Sylvia; Crawford stabbed Lee twice. Id.

Several hours after police taped the first statements, they again questioned the Crawfords independently regarding the events of August 5. Id. Their stories were again similar to each other, but distinctly different from the earlier version of the encounter. Id. This time the Crawfords each revealed that the alleged sexual assault had actually occurred several weeks earlier. Id. On the night in question, both Crawfords contended, Michael became angry when Lee was mentioned and he and his wife left to find Lee. Id. Sylvia directed her husband to Lee's apartment and after talking with him for a short period, Crawford stabbed Lee twice. Id. Although unclear, the main distinguishing factor in these second statements was that Crawford alluded that Lee *may* have had something in his hand *when* Crawford *428 stabbed Lee, while Sylvia implied that Lee *may* have grabbed for something *after* Crawford stabbed Lee. Id.

Crawford was charged with attempted first degree murder while armed with a deadly weapon and first degree assault while armed with a deadly weapon. Clerk's Papers (CP) at 2. At trial, Crawford claimed that he acted in self- defense and he invoked the marital privilege to prevent his wife from testifying against him. Report of Proceedings (RP) at 7-8. The trial court admitted both of Sylvia's statements on the grounds that the statements would not violate the marital privilege and because the court determined that the statements were sufficiently reliable to alleviate confrontation clause concerns. RP at 45, 53; RP at 219-21, Exs. 37, 38; RP at 231, Exs. 41-42. A jury subsequently convicted Crawford of first degree assault while armed with a deadly weapon. CP at 2. In an unpublished opinion, a divided Court of Appeals concluded that Crawford did not waive his right to confrontation when he invoked the marital privilege. *Crawford*, 2001 WL 850119, at *1. It then held that admitting Sylvia's second statement was reversible error because her statement did not possess adequate indicia of reliability, nor did it interlock with Michael's second statement. Id. at *5-7. Accordingly, the Court of Appeals reversed Crawford's conviction. Id. at *1. We granted review.

WAIVER OF RIGHT TO CONFRONTATION

[1] Crawford invoked the marital privilege, RCW 5.60.060, to keep his wife from testifying against him at trial. RP at 7. The marital privilege in

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Washington states in relevant part:

> A husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband; nor can either during marriage or afterward, be without the consent of the other, examined as to any communication made by one to the other during marriage.

*429 RCW 5.60.060(1). Neither Crawford nor the State called Sylvia to testify. *See* RP at **659 7-14. Crawford claims, however, that his confrontation right under the Sixth Amendment, as applied to the states through the due process clause of the Fourteenth Amendment, was violated when Sylvia's hearsay statements to the police were admitted at trial.

The State contends that Crawford waived his right to confrontation when he neglected to call Sylvia at trial, relying on *State v. Salazar*, 59 Wash.App. 202, 796 P.2d 773 (1990) and *In re Personal Restraint of Sauve*, 103 Wash.2d 322, 692 P.2d 818 (1985), to support its position. While instructive, both *Salazar* and *Sauve* contain a key distinction from the case before us, making them distinguishable. In those cases the witness was "available"; Sylvia Crawford was not an available witness.

In *Salazar*, the defense counsel did not call an informant suggesting that defense was unable to locate him. 59 Wash.App. at 216, 796 P.2d 773. Rejecting the assertion that the witness was unavailable, the court stated, "We have held that a defendant who fails to call an available hearsay declarant waives an objection under the confrontation clause to admission of the hearsay." *Salazar*, 59 Wash.App. at 217, 796 P.2d 773 (citing *State v. Borland*, 57 Wash.App. 7, 12, 786 P.2d 810 (1990)). "Similarly, defense counsel's failure to call [the informant], who we assume was available absent persuasive evidence to the contrary, waived any confrontation clause objection." *Id.*

In *Sauve*, the defendant claimed that his confrontation right was violated when the police officer who received an informant's tip, failed to testify at the suppression hearing. 103 Wash.2d at 329, 692 P.2d 818. Although the court did not directly hold that Sauve had waived his confrontation right, it did note that the defendant's failure to exercise his rights at trial did not constitute a denial of such rights by the court. *Sauve*, 103 Wash.2d at 330, 692 P.2d 818 (citing *State v. Murphy*, 35 Wash.App. 658, 669 P.2d 891 (1983); *State v. Whittington*, 27 Wash.App. 422, 618 P.2d 121 (1980)). Accordingly, the court stated,

> There is no evidence that petitioner asked the State for the testimony of the officer who received the tip, nor did petitioner *430 himself attempt to call the officer to the stand. The State was not given a chance at trial to either present the officer's testimony or prove his unavailability. The failure of petitioner to exercise his rights at trial does not constitute a denial of such rights. *Id.*

In both *Salazar* and *Sauve* the witnesses were available, but the defense failed to call them at trial. In the case presented, in contrast, the witness, Sylvia Crawford, was unavailable to testify because Michael Crawford had invoked his marital privilege. The marital privilege explicitly states that "[a] husband shall not be examined for or against his wife, without the consent of the wife, nor a wife for or against her husband without the consent of the husband." RCW 5.60.060(1). This language specifically denies Sylvia the ability to testify either for or against her husband, rendering her unavailable as a witness. Although Michael, not Sylvia, invoked the privilege, the result is the same--Sylvia was unavailable to testify, unlike the witnesses in *Salazar* and *Sauve*. Therefore, the situation before us is distinct from *Salazar* and *Sauve* and it does not logically follow that Crawford waived his confrontation rights by not calling his wife to testify.

The conclusion that Crawford did not waive his confrontation rights is supported by a decision from this court that directly addressed the issue of marital privilege and extrajudicial statements by a third party. *See State v. Burden*, 120 Wash.2d 371, 374, 841 P.2d 758 (1992). In *Burden*, this court stated, "Here, the defendant asserts admission of Mary Burden's extrajudicial statements by third persons would indirectly violate the testimonial privilege and place [the defendant] in the position of having to waive the privilege to refute the testimony or allow the testimony without cross examination. We have previously rejected this argument." *Id.* (citing *State v. Kosanke*, 23 Wash.2d 211, 160 P.2d 541 (1945)). By recognizing the rejection of this argument, this court implied that the testimonial privilege is not violated by admissible hearsay

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statements*431 and, furthermore, that the defendant does not have **660 to waive the marital privilege to refute the testimony. Therefore, the defendant cannot be said to have waived his right to cross examination. [FN1]

FN1. Citing *Kosanke*, the *Burden* court further supported its position that the admission of the testimony neither indirectly violated the marital privilege nor forced the defendant to waive the privilege to refute the testimony.
"[T]he court [has not gone] so far as to hold that relevant and material evidence could not be adduced merely because, in order to refute the same, the wife of a defendant might have to be called as a witness. In this case the wife of appellant was not called as a witness by respondent, nor was the attention of the jury called to her in such a way as to require objection on the part of appellant in order to preserve his rights under the statute.... [T]he fact that refutation of competent evidence would require the wife being a witness does not make it erroneous to adduce the testimony. *The statute [testimonial privilege] was not violated either directly or indirectly.*"
Burden, 120 Wash.2d at 374, 841 P.2d 758 (quoting *Kosanke*, 23 Wash.2d at 217-18, 160 P.2d 541). According to this passage it is clear that the marital privilege still stands, as well as the right to confront the witness; neither has been waived.

[2][3] Further, courts are hesitant to accept waiver of a defendant's Sixth Amendment rights because of their significance in the trial process. *See generally* John R. Kroger, *The Confrontation Waiver Rule*, 76 B.U. L.REV. 835 (1996). " 'There are few subjects, perhaps, upon which [the Supreme Court] and other courts have been more nearly unanimous than in their expressions of belief that the right of confrontation and cross-examination is an essential and fundamental requirement for the kind of fair trial which is this country's constitutional goal.' " *Id.* at 840 (quoting *Pointer v. Texas*, 380 U.S. 400, 405, 85 S.Ct. 1065, 13 L.Ed.2d 923 (1965)). Where a waiver has been recognized, the waiver usually occurs when the defendant has inappropriately caused the witness's unavailability. *Id.* at 844. Thus, " 'a defendant may waive the right to confront witnesses against him when his own misconduct is responsible for a witness's unavailability at trial.' " *Id.* at 842 (quoting *United States v. Potamitis*, 739 F.2d 784, 788 (2d Cir.1984)). Misconduct is not apparent when a defendant invokes a statutory privilege, however. *See United States v. Barlow*, 693 F.2d 954, 962 (6th Cir.1982) (suggesting that only sham marriage would result in waiver, but admitting legitimate spouse's grand jury testimony when it met *432 adequate guarantees of trustworthiness). In the case before us Crawford invoked a recognized statutory privilege. [FN2]

FN2. Although no formula has emerged for application of the confrontation waiver rule, case law suggests six major legal issues that courts will resolve before applying the doctrine: "(1) witness unavailability, (2) cause of unavailability, (3) intent, (4) standard of proof, (5) statement reliability, and (6) waiver hearing procedure." Kroger, *supra*, at 846. The key element for this case is the cause of the unavailability. "Two paradigmatic ways in which a defendant satisfies the causation requirement have evolved: murder and threats." *Id.* at 849. From this statement it is apparent that the evolution of the waiver doctrine has not been directed at the legitimate invocation of statutory privileges, absent threat or other indication of malfeasance.

As the Court of Appeals acknowledged here, forcing the defendant to choose between the marital privilege and confronting his spouse presents an untenable Hobson's choice. *Crawford*, 2001 WL 850119, at *1. The Court of Appeals aptly noted that this court traditionally has "not required a defendant to waive one right to preserve another." *Id.* (citing *State v. Michielli*, 132 Wash.2d 229, 246, 937 P.2d 587 (1997) (upholding dismissal of case where defendant was forced to choose between waiving right to speedy trial or right to effective assistance of counsel); *State v. Price*, 94 Wash.2d 810, 814, 620 P.2d 994 (1980) (stating that forcing defendant to choose between effective assistance of counsel and speedy trial impermissibly prejudices defendant)). Both *Michielli* and *Price* present situations where a defendant was forced to balance his trial rights and ultimately select one right to the exclusion of the other. To force a defendant to choose the more difficult position of confronting his spouse on the stand, or to assume that he has waived his confrontation right by electing not to call his wife, presents a similarly untenable choice and undermines the marital privilege itself. Therefore, we hold that Crawford did not waive his right to confrontation when he invoked the marital privilege.

**661 ADMISSIBILITY OF HEARSAY

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If Crawford did not waive his right to confrontation, the State contends in the alternative that Sylvia's out-of-court *433 statements to the police were admissible hearsay that did not violate the Sixth Amendment.

This court has noted a distinction between in-court testimony and extrajudicial statements by a spouse. In drawing a distinction between the two, we have concluded that hearsay statements may be admissible under certain circumstances. *Burden*, 120 Wash.2d at 377, 841 P.2d 758. Forcing a spouse to testify, however, challenges the policy purposes behind the privilege. In *Burden*, this court determined that the policy purposes--fostering domestic harmony and preventing discord, reflecting the natural repugnance of having one spouse testify against the other, and preventing the testifying spouse from having to choose between perjury, contempt of court, or jeopardizing the marriage--supported this distinction. *Id.* at 375, 841 P.2d 758 (citing *State v. Thorne*, 43 Wash.2d 47, 55, 260 P.2d 331 (1953); *State v. Wood*, 52 Wash.App. 159, 163, 758 P.2d 530 (1988); Teresa Virginia Bigelow, Comment, *The Marital Privileges in Washington Law: Spouse Testimony and Marital Communications*, 54 WASH. L.REV. 65, 70 (1978-79)). We concluded that the latter two purposes would not be affected by allowing third person testimony, because the spouse would not be testifying in court, and questioned the applicability of the first purpose. *Burden*, 120 Wash.2d at 375-76, 841 P.2d 758. Thus, as we have acknowledged, confronting a spouse on the stand is quite distinct from admitting an extrajudicial statement.

[4] To assess whether an extrajudicial hearsay statement is admissible we apply a multilayered analysis, in consideration of the valuable constitutional protections afforded by the Sixth Amendment. Simply because a statement falls within a hearsay exception does not mean that it will satisfy the Sixth Amendment. *State v. Rice*, 120 Wash.2d 549, 565, 844 P.2d 416 (1993). Therefore, the court will employ specific safeguards " 'to ensure that the proffered evidence offers some reliability in terms of the declarant's perception, memory and credibility--a function traditionally performed by cross examination.' " *Id.* at 566, 844 P.2d 416 (quoting *State v. Anderson*, 107 Wash.2d 745, 750-51, 733 P.2d 517 (1987)).

[5][6][7] *434 First, the statements must be admissible under the rules of evidence. *Rice*, 120 Wash.2d at 564, 844 P.2d 416. Second, the statements must contain a sufficient indicia of reliability and trustworthiness to satisfy the requirements of the confrontation clause. *Id.* A firmly rooted exception to the hearsay rule will satisfy this requirement. *State v. Davis*, 141 Wash.2d 798, 845, 10 P.3d 977 (2000). If the exception is not firmly rooted, then the court will consider nine nonexclusive factors to determine the relative reliability of the hearsay statements. [FN3] *Rice*, 120 Wash.2d at 565-66, 844 P.2d 416; *State v. Whelchel*, 115 Wash.2d 708, 722-25, 801 P.2d 948 (1990). Alternatively, the indicia of reliability test can be met if the statements "interlock" in accordance with our decision in *Rice*. 120 Wash.2d at 569-70, 844 P.2d 416.

FN3. The nine factors include: (1) whether the declarant, at the time of making the statement, had an apparent motive to lie; (2) whether the declarant's general character suggests trustworthiness; (3) whether more than one person heard the statement; (4) the spontaneity of the statement; (5) whether trustworthiness is suggested from the timing of the statement and the relationship between the declarant and the witness; (6) whether the statement contains express assertions of past fact; (7) whether the declarant's lack of knowledge could be established by cross-examination; (8) the remoteness of the possibility that the declarant's recollection is faulty; and (9) whether the surrounding circumstances suggest that the declarant misrepresented the defendant's involvement.

[8][9] Sylvia's first statement to the police is not hearsay because it was not offered to prove the truth of the matter asserted. [FN4] ER 801(c). Instead, as the Court of Appeals noted, it was offered to demonstrate that the Crawfords lied about the circumstances preceding the assault. *Crawford*, 2001 WL **662 850119, at *5. Considering that out-of-court statements raise hearsay and confrontation clause objections only when they are offered to prove the truth of the matter asserted, Sylvia's first statement is not inherently objectionable. *State v. Parris*, 98 Wash.2d 140, 145, 654 P.2d 77 (1982). It will be admissible, however, only if it is relevant under ER 401, and it is relevant only if her second statement is admitted.

FN4. The defense counsel did not object to the admission of the statements as hearsay when they

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were presented at trial. *See* RP at 219- 32. Defense argument appears to hinge on the previous invocation of the marital privilege and right to confrontation. *See* RP at 7-21, 37.

[10][11] *435 Sylvia's second statement is hearsay: The declarant is unavailable at trial--because Crawford invoked the marital privilege--and the statement is being offered to prove the truth of the matter asserted. ER 801(c). The State contends that Sylvia's second statement is admissible under ER 804(b)(3), the hearsay exception for a declarant's statement against penal interest. A statement against penal interest is not considered a firmly rooted exception to the hearsay rule, however. *Whelchel*, 115 Wash.2d at 715, 801 P.2d 948. Therefore, "out-of-court statements from a nontestifying codefendant made against penal interests and which inculpate the defendant are admissible against the defendant only when they bear adequate indicia of reliability." *State v. St. Pierre*, 111 Wash.2d 105, 113, 759 P.2d 383 (1988) (citing *Anderson*, 107 Wash.2d at 750, 733 P.2d 517; *State v. Dictado*, 102 Wash.2d 277, 287-88, 687 P.2d 172 (1984)). Thus, we must determine whether the statement contains a sufficient indicia of reliability to satisfy the confrontation clause. *See Ohio v. Roberts*, 448 U.S. 56, 66, 100 S.Ct. 2531, 65 L.Ed.2d 597 (1980).

[12] Before we determine whether the statement is sufficiently reliable to satisfy confrontation clause concerns, we must assess which portions of the statement were actually against Sylvia's penal interest. Only the portions of Sylvia's statement that are self-inculpatory will be admitted under the statement against interest exception to the hearsay rule. *See State v. Roberts*, 142 Wash.2d 471, 491-97, 14 P.3d 713 (2000); ER 804(b)(3). In *Roberts* this court adopted the Supreme Court's rejection of a "whole statement" approach to defendant declarations. 142 Wash.2d at 494, 14 P.3d 713 (adopting *Williamson v. United States*, 512 U.S. 594, 114 S.Ct. 2431, 129 L.Ed.2d 476 (1994)). Therefore, even though self-exculpatory statements may be included within a statement that is generally inculpatory, only those portions that are actually self-inculpatory are admissible. *Id.* at 492-94, 14 P.3d 713.

A statement against interest, or self-inculpatory statement, is defined as:

*436 A statement which was *at the time of its making* so far contrary to the declarant's pecuniary or proprietary interest, or so far tended to subject the declarant to civil or criminal liability, or to render invalid a claim by the declarant against another, that a reasonable person in the declarant's position would not have made the statement unless the person believed it to be true.
ER 804(b)(3) (emphasis added).

[13] Crawford objected to the admission of Sylvia's statements that he was " 'infuriated,' " " 'past tipsy,' " and that he said Lee " 'deserves a ass whoopin.' " *Crawford*, 2001 WL 850119, at *7 n. 3 (Armstrong, C.J., dissenting). He also objected to the admission of Sylvia's statement regarding whether Lee reached for or possessed a weapon when Michael assaulted him because it allegedly rebutted his own testimony and damaged his self-defense claim.

While potentially damaging to Michael, these statements are all inculpatory of Sylvia as well. It was Sylvia who showed Michael where to find Lee and she was present through the duration of the violent encounter. She walked away from the stabbing with Michael and did not turn to the police when she had the opportunity. As a potential accomplice, [FN5] therefore, Sylvia would benefit from limiting Michael's involvement; the lesser his charge, the lesser her accomplice liability. Sylvia's statements that Michael was "infuriated," "past tipsy," and that he **663 said Lee "deserves a ass whoopin" would not shift blame from her to Michael, but rather it could increase Michael's culpability, and potentially hers as well. Furthermore, if Sylvia knew that Michael wanted to give Lee an "ass whoopin" and took Michael to find Lee, this fact could support a charge against Sylvia for accomplice liability because she could be viewed as encouraging or aiding the facilitation of a crime. *See* RCW 9A.08.020(3)(a). Likewise, Sylvia's assertion that Lee *437 may have reached into his pocket, possibly for a weapon, but had empty hands when Michael stabbed him, would be against her interest. Rather, she would benefit her own case if she had said that Lee wielded a weapon throughout the confrontation and that Michael was merely protecting himself. Therefore, we conclude that these statements were self-inculpatory and admissible hearsay, provided they meet a sufficient indicia of reliability.

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FN5. An accomplice is someone who with knowledge that it will promote or facilitate the commission of a crime either (1) solicits, commands, encourages, or requests such other person to commit the crime or (2) aids or agrees to aid the other person in planning or committing the crime. RCW 9A.08.020(3)(a).

[14][15] Because a codefendant's confession is presumed unreliable, [FN6] the statement must either meet a firmly rooted exception to the hearsay rule [FN7] or provide some indicia of reliability, such as interlocking with the defendant's own confession. *St. Pierre*, 111 Wash.2d at 112-13, 759 P.2d 383. The State asserts that Sylvia's second statement is admissible as an interlocking confession with Michael's second statement. *See generally Rice*, 120 Wash.2d 549, 844 P.2d 416 (adopting *Lee v. Illinois*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed.2d 514 (1986)). As this court recognized in *Rice*, "[w]hen a codefendant's confession is virtually identical [i.e., interlocks] to that of a defendant, it may be deemed reliable." *Id.* at 570, 844 P.2d 416 (citing *Lee*, 476 U.S. 530, 106 S.Ct. 2056, 90 L.Ed.2d 514). Hence an interlocking confession will serve the same purpose as the nine-factor test in assessing reliability. *Id.*

FN6. Although Sylvia is not a codefendant, as she has not been formally charged with a crime, her role is similar to that of a codefendant. She was present during the assault, was arrested and gave a statement to the police concerning the events, and had an arguable motive to shift the blame away from herself. Her role in this case thus suggests applying the *Rice* interlocking confession analysis by analogy.

FN7. As previously noted, a statement against penal interest is not a firmly rooted hearsay exception for purposes of the confrontation clause.

[16] The Court of Appeals here held that, although the Crawfords' statements were "very similar," they differed regarding whether Lee was armed when Michael stabbed him. *Crawford*, 2001 WL 850119, at *6. Following are the two statements for comparison.

Sylvia's statement:
Q: did Kenny do anything to fight back from this assault
*438 A: (pausing) I know he reached into his pocket ... or somethin' ... I don't know what
Q: after he was stabbed
A: he saw Michael coming up. He lifted his hand ... his chest open, he might of went to go strike his hand out or something and then (inaudible)
Q: okay, you, you gotta speak up
A: okay, he lifted his hand over his head maybe to strike Michael's hand down or something and then he put his hands in his ... put his right hand in his right pocket ... took a step back ... Michael proceeded to stab him ... then his hands were like ... how do you explain this ... open arms ... with his hands open and he fell down ... and we ran (describing subject holding hands open, palms toward assailant)
Q: okay, when he's standing there with his open hands you're talking about Kenny, correct
A: yeah, after, after the fact, yes
Q: did you see anything in his hands at that point
A: (pausing) um um (no)
Ex. 42, at 6-7.

Michael's statement:
Q: okay. Did you ever see anything in [Lee's] hands
A: I think so, but I'm not positive
Q: okay, when you think so, what do you mean by that
A: I coulda swore I seen him goin' for somethin' before, right before everything **664 happened. He was like reachin', fiddlin' around down here and stuff ... and I just ... I don't know, I think, this is just a possibility, but I think, I think that he pulled somethin' out and I grabbed for it and that's how I got cut ... but I'm not positive. I, I my mind goes blank when things like this happen. I mean, I just, I remember things wrong, I remember things that just doesn't, don't make sense to me later.
Ex. 44, at 7.

Although the Court of Appeals concluded that the statements were contradictory, upon closer inspection they appear *439 to overlap. The Court of Appeals stated that Sylvia's version of the story had Lee grabbing for something only after he had been stabbed, while Michael stated that Lee may have had something in his hand before the attack. *Crawford*, 2001 WL 850119, at *6. However, when asked whether Lee fought back from the assault, Sylvia states that Lee "lifted his hand over his head maybe to strike Michael's hand down or something and then he put his hands in his ... put his right

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hand in his right pocket ... took a step back ... Michael proceeded to stab him...." Ex. 42, at 7. She also previously stated that she was unsure how Michael received the cut on his hand. *Id.* at 6. Thus, it is unclear from Sylvia's statement when, if ever, Lee possessed a weapon.

Michael's statement is equally ambiguous. He states, "I coulda swore I seen him goin' for somethin' before, right before everything happened. He was like reachin', fiddlin' around down here and stuff ... and I just ... I don't know, I think, this is just a possibility, but I think, I think that he pulled somethin' out and I grabbed for it and that's how I got cut ... but I'm not positive." Ex. 44, at 7. Thus, both of the Crawfords' statements indicate that Lee was possibly grabbing for a weapon, but they are equally unsure when this event may have taken place. They are also equally unsure how Michael received the cut on his hand, leading the court to question when, if ever, Lee possessed a weapon. In this respect they overlap.

Self-defense is at issue in this case, so admittedly the timing of Lee's possession of a weapon is significant. However, both of the Crawfords' statements are ambiguous as to whether Lee ever actually possessed a weapon. The interlocking confession rule is designed to admit "virtually identical" statements. *Rice*, 120 Wash.2d at 570, 844 P.2d 416. As the dissent from the Court of Appeals noted, and we agree, "neither Michael nor Sylvia clearly stated that Lee had a weapon in hand from which Michael was simply defending himself. And it is this omission by both that interlocks the statements and makes Sylvia's statement reliable." *Crawford*, *440 *2001 WL 850119, at * 7 (Armstrong, C.J., dissenting). Because Sylvia's and Michael's statements are virtually identical, admission of Sylvia's statement satisfies the requirement of reliability under the confrontation clause.*

CONCLUSION

We hold that a defendant does not waive his Sixth Amendment right to confront an adverse witness when he invokes the marital privilege to keep his wife from testifying at trial. Thus, Michael Crawford did not waive his confrontation clause rights when he invoked RCW 5.60.060 and refused to call his wife, Sylvia, to testify at his trial. Sylvia's pretrial statements to the police, at issue in this case, were admissible, however, because they were self- inculpatory and they interlocked with Michaels' own admissible statements.

We reverse the Court of Appeals and reinstate the conviction.

ALEXANDER, C.J., SMITH, JOHNSON, MADSEN, SANDERS, IRELAND, CHAMBERS and OWENS, JJ., concur.

54 P.3d 656, 147 Wash.2d 424

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B 5 Response Requested

ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES
NO. 02-9410

STATE OF WASHINGTON,
Respondent,
vs.
MICHAEL D. CRAWFORD,
Appellant.

CERTIFICATE OF MAILING

STATE OF WASHINGTON)
) ss.
COUNTY OF THURSTON)

I, Carol E. Jones, hereby state under penalty of perjury, that I am over the age of 18 years and competent to be a witness in the above-entitled cause, that on the 8th day of May, 2003, I caused to be mailed to the Appellant's Attorney of record, BRUCE E.H. JOHNSON, a copy of STATE'S RESPONSE TO PETITION FOR WRIT OF CERTIORARI, by depositing same in the United States mail at Olympia, Washington, addressed as follows:

BRUCE E.H. JOHNSON
Attorney at Law
2600 Century Square
1501 Fourth Avenue
Seattle, WA 98101-1688

I hereby swear under penalty of perjury under the laws of the State of Washington, that the above is true and correct.

Signed this 5th day of May, 2003, at Olympia, Washington.

Carol E. Jones
Prosecutorial Assistant

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